CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 577

RICKERT RICE MILLS, INC., PETITIONER,

vs.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 11, 1935.

CERTIORARI GRANTED NOVEMBER 25, 1935.

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UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

No. 321 (Equity).

RICKERT RICE MILLS, INC.,

versus

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA.

Appearances:

Messrs. Homer L. Bruce, John P. Bullington and Baker, Botts, Andrews & Wharton, Attorneys for Rickert Rice Mills, Inc., Plaintiff-Appellant.

Rene A. Viosca, Esq., United States Attorney and Robert Weinstein, Asst. U. S. Attorney, appearing on behalf of Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Defendant-Appellee.

APPEAL from the District Court of the United States for the Eastern District of Louisiana, to the United States Circuit Court of Appeals for the Fifth Circuit, returnable within thirty (30) days from the 29th day of October, 1935, at the City of New Orleans, Louisiana.

TRANSCRIPT OF RECORD.

2 BILL OF COMPLAINT & EXHIBITS ATTACHED.

Filed Oct. 25, 1935.

In the District Court of the United States, Eastern District of Louisiana, New Orleans Division.

Rickert Rice Mills, Inc., Plaintiff,
vs. No. 321 In Equity.
Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Defendant.

(Filed—October 26th, 1935.)

To the Honorable Wayne G. Borah, Judge of the United States District Court, for the Eastern District of Louisiana:

Comes now Rickert Rice Mills, Inc., hereinafter referred to as plaintiff and in the neuter singular, complaining of Rufus W. Fontenot, individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, hereinafter called defendant, and for cause of action shows to the Court as follows:

1.

Plaintiff is a corporation organized under the laws of the State of Louisiana with its principal office and domicile at New Orleans in Orleans Parish, Louisiana. The defendant is a citizen of the State of Louisiana residing at New Orleans, Louisiana, and is the duly appointed, commissioned, qualified and Acting United States Collector of Internal Revenue for the State of Louisiana.

2.

The grounds of jurisdiction of this Court in this case are that this is a suit arising under the Constitution of the United States and the laws of the United States, in of the United States, and the laws of the United States, in which the matters in controversy exceed Three Thousand Dollars ($3,000.00), and this suit is also one in which an injunction is sought against an official of the United States to prevent him from unlawfully collecting processing taxes levied by the United States pursuant to certain acts of Congress, more fully set out hereinafter, and to have declared invalid and unconstitutional said acts of Congress in so far as they attempt to provide for the levy, assessment and collection of said processing tax.

3

3.

Plaintiff is engaged in the business of milling rice and owns and operates a rice mill at Baton Rouge, Louisiana. The milling of said rice, which constitutes processing of said rice under the terms of the Agricultural Adjustment Act, hereinafter referred to, is done wholly within said State and is a matter of intrastate commerce exclusively, being performed in its entirety within the limits of said State wherein plaintiff's rice mill is established and operated.

4.

There was adopted by the 73rd Congress and approved on May 12, 1933, an Act, P. L. No. 10, popularly known as the "Agricultural Adjustment Act," but officially entitled:

"An Act to relieve the existing national Economic emergency by increasing agricultural purchasing power,

to raise revenue for extraordinary expenses incurred by reason of the emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of jointstock land banks, and for other purposes."

and said Act with its amendments, for convenience hereinafter, will be referred to by its popular title, namely, the Agricultural Adjustment Act.

Said Agricultural Adjustment Act has been amended several times and particularly by an amendment approved August 24, 1935, which amendment is hereinafter referred to as the Amendment of August 24, 1935.

5.

The policy to be effectuated by the enactment of said Act, prior to the Amendment of August 24, 1935, was declared by Congress in Section 2 to be as follows:

"It is hereby declared to be the policy of Congress—

(1) To establish and maintain such balance between the production and consumption of argicultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. The base period in the case of all agricultural commodities except tobacco shall be the prewar period, August 1909-July 1914. In the case of tobacco, the base period shall be the postwar period, August 1919-July 1929.

(2) To approach such equality of purchasing power by gradual correction of the present inequalities there-

in at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets.

(3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the prewar period, August 1909-July 1914."

4 By said Amendment of August 24, 1935, Subsection (1) of said Section 2 was amended by inserting at the beginning thereof the words

"Through the exercise of the powers conferred upon the Secretary of Agriculture under this title."

and Subsections (2) and (3) were stricken out and the following inserted in lieu thereof:

"(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section."

Plaintiff alleges that under no provision of the Constitution of the United States is the Congress of the United States authorized to provide for said processing taxes for the purpose of accomplishing any of

said policies above set forth, and the levy, assessment and collection of said taxes have been provided for in said Act, not for the purpose of raising revenue, but for the purpose of accomplishing the things set out in said declaration of policy of Congress and for said reasons the levy, assessment and collection of said taxes are wholly illegal, unlawful and unwarranted under the Constitution of the United States.

6.

Section 8 of said Agricultural Adjustment Act provides in substance that, in order to effectuate the declared policy of the Act, the Secretary of Agriculture shall have power to provide for a reduction and adjustment in the acreage and production for market, or both, of any basic agricultural commodity, including rice, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith, in such amounts as the Secretary finds best calculated to effectuate the declared policy of the Act, to be paid out of the moneys hereinafter referred to.

Section 9(a) of said Agricultural Adjustment Act levies the processing taxes thereinafter provided. It then provides that when the Secretary of Agriculture determines that any one or more payments (including said rental or benefit payments) authorized to be made under Section 8 of said Act or to be made with respect to any basic agricultural commodity, he shall proclaim such determination and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation. Said Act, however, provided that with respect to rice the processing tax for the period from April 1, 1935, to July 31, 1936, should be at the rate of 1c

per pound of rough rice. Under a similar provision of said Act before being amended by the Amendment of August 24, 1935; the Secretary was directed to proclaim, and did proclaim, before April 1, 1935, that rental or benefit payments would be made with respect to rice and the processing tax of 1c per pound of rough rice would be in effect on and after April 1, 1935.

Section 9(b) of said Agricultural Adjustment Act provides that the processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, as those terms are defined in the Act, plus such percentage of such difference, not to exceed 20 per centum, as the Secretary may determine will result in the collection in any marketing year of an amount of tax equal to (A) the amount of credits or refunds which he estimates will be allowed during such period with respect to the commodity and (B) the amount of the tax which he estimates would have been collected during such period upon all processings of such commodity exempt from tax because such processings are done by or for a State or a political subdivision or an institution thereof, except that the processing tax on rice for the period above mentioned should be at the rate of 1c per pound of rough rice.

Section 12(a) of said Act, prior to the Amendment of August 24, 1935, appropriated the sum of $100,000,000.00 to be available to the Secretary of Agriculture for administrative expenses under Title 1 of said Act and for rental and benefit payments made with respect to reduction in acreage or reduction in production for marked under Part 2 of said Title 1. Section 12(a) of said Act, after said amendment, appropriated the said sum of $100,000,000.00 to the Secretary for administrative expenses under Title 1

and for payments authorized to be made under Section 8, including said rental and benefit payments made with respect to adjustment and reduction in acreage or production for market or basic agricultural commodities, including rice.

6 Section 12(b) of said Act, prior to said Amendment of August 24, 1935, provided that, in addition to said $100,000,000.00, the proceeds derived from all processing taxes imposed under said Title 1 were appropriated to be available to the Secretary of Agriculture for expansion of markets and removal of surplus agricultural products and administrative expenses, rental and benefit payments, and refunds on taxes. Section 12 (b) of said Act as amended by said Amendment of August 24, 1935, provided that, in addition to said $100,000,000.00 a further sum was appropriated to be available to the Secretary of Agriculture for payments authorized to be made under said Section 8, including said rental and benefit payments, said sum so appropriated to be equal to the proceeds derived from all processing taxes imposed under said Act.

7.

Acting pursuant to the purported authority given to him under said Agricultural Adjustment Act, the Secretary of Agriculture under date of April 18, 1935, through R. G. Tugwell, the then acting Secretary of Agriculture, promulgated certain rulings relating to the 1935 Southern Rice Production Adjustment Program, a copy of which rulings is attached hereto as Exhibit A and made a part hereof as if fully copied herein at this point. Under said rulings the Secretary of Agriculture allotted acreage to be planted in rice and barrels of rice to be produced, (a barrel being defined as being one hundred sixty-two pounds of rough rice)

in the States of Arkansas, Louisiana and Texas as follows:

	Acres.	Barrels.
Arkansas	135,000	1,834,722
Louisiana	364,500	3,898,333
Texas	142,500	2,010,833

Said rulings provided for a State Committee appointed by the Secretary of Agriculture for each State and for various forms and applications to be filled out by those desiring to produce rice and to be filed with the said State Committee. Said rulings provided that the base period for Texas should be the years 1931 to 1933, inclusive, and for Arkansas and Louisiana should be the years 1929 to 1933, inclusive. Said rulings further provided that the said State Committee should make an allotment to a producer applying to the Secretary of Agriculture through said State Committee for permission to grow rice during the year 1935, by taking the average acreage planted by such producer during the base period applicable to him and by reducing this result by 20% in Arkansas and in Louisiana and by 22% in Texas; and should give an allotment or permission to said producer to plant said 80% (in the case of Arkansas and Louisiana) or 78% (in the case of Texas) of the average acreage planted by him during said base period. Said rulings further provided for said State Committee to allot to each such producer a quota of barrels of rice that he might produce during the year 1935 by allotting to him 80% (if in Arkansas or Louisiana) or 78% (if in Texas) of the average number of barrels of rice raised by him during said base period.

7

If a producer had produced rice during any of the years constituting his base period he was eligible to obtain an allotment and a quota from said State Committee, and if he should obtain such allotment and

quota, he was then eligible to execute a contract with the Secretary of Agriculture in the form shown by Exhibit B attached hereto and made a part hereof for all purposes as if copied in full at this point. If said producer executed said contract and it was accepted by the Secretary, he was then eligible for the benefit payments to be made by the Secretary as provided for in said agreement. However, if a producer had not produced rice during any of the years constituting his base period, he was not eligible to execute said contract with the Secretary and was not eligible for the benefit payments provided for therein. Likewise, if a producer did not execute such contract, or if he executed such contract and it was not accepted by the Secretary, he was not eligible for the benefit payments as provided for therein.

Plaintiff alleges that said processing taxes were not levied under the taxing power of the United States and for the purpose of raising revenue, but were levied for the purpose of raising money with which the Secretary of Agriculture could make rental or benefit payments to producers of agricultural products, including rice, who would agree with the Secretary of Agriculture to reduce their acreage and production of agricultural products, including rice, and for the purpose of controlling, regulating, and reducing the amount of acreage that would be planted to rice and the amount of rice that would be grown, and to accomplish the purposes set out in Section 2 of said Act, and that the Congress of the United States had no authority under the Constitution of the United States to levy said processing taxes for said purpose and for said objects.

8.

Section 8 further provides that, in order to effectuate the declared policy of the Act, the Secretary is empowered to provide for a reduction in acreage or a reduction in production of any

basic agricultural commodity through agreements with producers, and to provide for rental or benefit payments in connection therewith in such amounts as the Secretary deems fair and reasonable, but there is no standard or measure established or provided in said Act by which the said Secretary shall be guided in providing for said reduction in acreage or production or in the amount of the rental or benefit payments, and said provisions are wholly invalid and violative of Article 1 of the Constitution of the United States which vests all the legislative power in the Congress of the United States and is an invalid and unconstitutional delegation of legislative power by Congress to the Secretary of Agriculture.

Plaintiff further alleges that the Secretary has made no findings whatsoever, and if he has made any such findings, they are wholly insufficient to support his action in providing said method of reduction of acreage and production of rice as above set forth, and his said regulations and provisions concerning said reduction of acreage and reduction of production and amounts of benefit payments are wholly arbitrary and unsupported by any findings, or at least any sufficient findings, by the Secretary of Agriculture and are not authorized by said Act or the Constitution of the United States.

9.

Section 9(b) of said Act provides that if the Secretary of Agriculture has reason to believe that the processing tax levied on any commodity will cause such reduction in the quantity of such production domestically consumed as to result in the accumulation of surplus stock thereof or in the depreciation of the farm price of the commodity, then he shall cause an investigation to be made on due notice and opportunity for hearing to interested parties, and if thereupon the

Secretary finds that such result will occur, then the processing tax on such commodity shall be at such rate as will prevent such accumulation of surplus stock and depreciation of said farm price. Said provision applies to the processing tax levied upon rice. Said provision sets no proper standard by which the Secretary shall be guided in determining the rate of the processing tax on rice or how long said tax of one cent (1c) per pound shall remain on rice, and the continuation of said processing tax being dependent upon said action by the Secretary, said provision is an unconstitutional delegation of legislative power to the Secretary of Agriculture in violation of Article 1 of said Constitution vesting the legislative power in the Congress, and for said reasons the said Act in levying said processing tax is void and illegal.

In addition to the foregoing reasons, the said Agricultural Adjustment Act and its provisions for the levying, assessment and collection of said processing taxes upon rice processed by this plaintiff are void, illegal and in violation of the Constitution of the United States for the following reasons:

1. They are an attempt and effort by the United States to regulate, control and reduce the production of certain agricultural commodities specified in said Act, including rice. The so-called processing taxes imposed by said Act are an integral part of the scheme, attempt and effort of regulating, controlling and reducing the production of such commodities, which attempt, effort and scheme is not within the scope of any of the powers vested in the Congress by the Constitution, and if said power exists as a governmental function, it is therefore within the powers reserved to the States as expressly provided by the Tenth Amendment to the Constitution.

2. The so-called processing taxes were not imposed under or in conformity with the power vested in the Congress by Section 8 of Article 1 of the Constitution to levy and collect taxes, duties, imposts and excises, in that they are not imposed to pay the debts or to provide for the common defense or the general welfare of the United States, but were imposed for the benefit of a particular class of individuals, namely, the producers of the various agricultural commodities specified in said Act who conform to the conditions laid down in said Act.

3. The said Act and provisions for the levy, assessment and collection of said processing taxes violates the provisions of the Fifth Amendment to the Constitution since the so-called processing taxes constitute the deprivation of the property of one class of citizens, including the plaintiff, namely, processors of said specified commodities, including rice, without due process of law, in that such processing taxes constitute the taking of the property of this class of citizens, including the plaintiff, not for a public purpose but for a private purpose, to-wit, the payment of gratuities or bounties or benefit payments to another class of persons, namely, the producers of the designated agricultural commodities, including rice, and particularly since this taking is without just compensation to the plaintiff and said processors.

4. Said so-called processing taxes levied by the Act are taxes in name only and not in fact. They constitute merely an exactment and imposition by the Government for the purpose, not of raising revenue for the support of the government, but of raising the price for farm products and adjusting farm income and for carrying out the policy of said Act as hereinabove set forth and for the purpose of enabling the government to carry out and effectuate the said attempt, effort and scheme of the United States as hereinabove set out.

5. Under the terms of Article 1, Section 1, of the Constitution of the United States, the legislative powers granted to the Federal Government are vested in the Congress; whereas, the said Act purports to vest powers in the Secretary of Agriculture, who alone is to determine, at his own discretion and without any definite standard fixed by Congress, the method of bringing about a reduction or adjustment in acreage and production of agricultural commodities, including rice; to provide for rental or benefit payments in connection therewith in such amounts as the Secretary may deem fair and reasonable; to determine how long the said tax of 1c per pound upon the processing of rice shall remain in effect, and if the Secretary changes said rate, what rate shall be fixed. In said respects the said Act involves an invalid delegation to the Secretary of Agriculture by Congress of powers vested exclusively in it by the Constitution and because of said things the said Act delegates said legislative powers to the Secretary of Agriculture and said powers are conferred exclusively on Congress by said Article 1, Section 1; Article 1, Section 8, clause 18; Article 11, Section 1; Article 1, Section 7, clause 1; and Article 1, Section 9, clause 7 of the Constitution.

6. The said taxes if construed as direct, violate Article 1, Section 9, clause 4, and Article 1, Section 2, clause 3 of the Constitution, because not apportioned according to population.

7. The said taxes are not excise taxes, and are not uniform throughout the United States as required by Article 1, Section 8, clause 1.

8. The said alleged taxes cannot be levied under Article 1, Section 8, clause 3, regulating commerce, because neither the production nor processing of commodities, including the processing of rice done by plaintiff, is in interstate commerce and cannot be regulated

by Congress and in so far as this plaintiff is concerned, its processing of said rice is not interstate commerce and cannot be regulated by Congress.

11. 11.

Under the terms of said Act and orders of the Secretary of Agriculture and the Secretary of the Treasury, the plaintiff is required to file returns with the defendant on or before the 30th day of October, 1935, showing the amount of rice processed by the plaintiff during the month of September, 1935, and the amount of said so-called processing tax on account of said rice processed by the plaintiff during said month, and plaintiff is required to pay said amount to the defendant on or before October 30, 1935. The amount of said processing taxes on account of the rice processed by the plaintiff during said month of September is $57,275.42. The defendant as said Collector of Internal Revenue is charged with the duty of collecting said tax, and if the plaintiff does not make said payment on or before October 30, 1935, the said defendant will assess said tax against the plaintiff and will serve upon the plaintiff notice and demand for the payment of said tax, and the plaintiff will be allowed ten days from the receipt of such notice and demand within which to pay said tax. In the event of failure to pay said tax within said time, the defendant will assess against the plaintiff a penalty equal to 5 per centum of the amount of the tax and interest on the tax at the rate of 1 per centum from the date of the tax until it is paid; if plaintiff fails to pay said tax within ten days after receipt of said notice and demand, the defendant will proceed to collect the tax, penalty and interest by filing a notice of lien upon all of plaintiff's property, and by distraining upon and selling such of plaintiff's property as may be necessary in order to realize the amount of said tax, penalties and interest. Additional processing taxes for months sub-

sequent to September, 1935, will accrue and will be assessed against and collected from plaintiff, just as the processing tax for the month of September will be, in the manner described, unless the defendant is restrained and enjoined from assessing and collecting said taxes. Plaintiff has its rice mill at the place stated in paragraph 3 hereof with a large inventory of rough rice and clean rice, bank accounts and cash on hand. Repeated levies upon and distraint of its property from month to month will cause plaintiff irreparable injury and damage, in that such levies and distraints will impair the valuable good-will of its business; will seriously interfere with, if not prevent, the actual operations of its plant and the sales of its product; and will result in a permanent injury to its business and good-will. Furthermore the tax, if once paid by plaintiff, will be irretrievably lost to plaintiff, to its great and irreparable injury.

12 12.

Plaintiff further shows that by the Amendment of August 24, 1935, Section 30, of said amendment added a new section to the Agricultural Adjustment Act designated as Section 21, a copy of which Section 21 is attached hereto and marked Exhibit C. Plaintiff does not have an adequate and complete remedy at law as to taxes levied and assessed under said Act because of the provisions of Section 21(d) of said Agricultural Adjustment Act. Under Section 21(d) a recovery will not be allowed to the plaintiff for any amount of the tax paid by plaintiff unless it shall be established that the plaintiff has not directly or indirectly included such amount in the price of the rice with respect to which it was imposed or passed on any part of any such amount to the vendee, or included any part of such amount in the charge or fee for processing, and that the price paid by the plaintiff for rough rice was not reduced by any part of such amount.

Plaintiff states that it is an impossibility to prove or attempt to prove what portion, if any, of the processing taxes paid by it has been either deducted from the purchase price of rough rice or added to the selling price of clean rice for the following reasons:

Rice millers buy rough rice at the market price, a price that is established by the competitive bidding of the many rice millers. Rough rice is bought in large quantities and kept on an average several months before the clean rice made from it is sold, and because of said facts the miller has no way of definitely knowing at the time of the purchase of rough rice whether he will make a profit or loss on the milling and selling of rice. A major factor in determining the market price of rough rice is the market price of clean rice at the time the rough rice is bought but there is no assurance, however, that the market price for clean rice will be the same at the time the miller actually sells the clean rice milled from the rough rice.

The miller who buys rough rice must pay the market price as established under these conditions, and has no power to fix or make the market price himself. Having no power to make prices, he cannot arbitrarily depress the market price of rice in order to pass the processing tax back to the producer.

Likewise, the miller sells the clean rice in competition with many other rice millers, and also in competition with many other food products, such as wheat, potatoes, beans and other food products, that can be substituted for rice. Under such circumstances, if the price of clean rice is pushed too high, con-
13 sumers will shift to other products with the result that the demand for rice will decline until the price of rice falls to where people will buy it instead of other competitive commodities. Under these circumstances the rice miller cannot fix or make

the price for clean rice, and cannot arbitrarily increase the price of clean rice in order to pass the processing tax on the purchaser of clean rice.

In addition, rough rice when milled produces many grades of rice and products thereof. It produces extra fancy head rice, fancy head rice, head rice, second head rice, screenings, brewers, polish, bran, and hulls, all of which commodities have varying values, extra fancy rice being the most valuable and the other grades being of less value in the order above set forth. Extra fancy, fancy, head and second head rice are generally sold for human consumption as rice. Screenings are sold to some extent for direct consumption by human beings. Brewers and screenings are a very low priced commodity and are used in general by breweries. Polish, bran and hulls are sold generally for stock feed. Some of such products, particularly brewers, polish, bran and hulls are sold practically always for a less price per pound than is paid for the rough rice per pound. There is no definite proportion by which the price paid for rough rice can be allocated in any way to these different grades of rice, so that it is impossible to tell with any degree of accuracy how much the rice and rice products that have been produced from any particular lot of rough rice have cost, making it impossible to tell what amount of the processing tax, if any, has been passed on to the purchaser of these articles.

Furthermore, the processing tax is levied upon the first processing of the rough rice and must be paid by the end of the calendar month following the month in which the processing occurred. On the other hand, when a lot of rough rice has been processed in any month, some of the grades may be sold immediately, whereas some of the other grades produced from said rice may be kept for several months before being sold, and it is thus impossible to tell how much has been

received for the clean rice and its products that are produced from any month's processing, and it is impossible to tell how much, if any, of said processing tax has been passed on to the purchaser of said clean rice.

Indeed, it is impossible even to determine whether, for any given month, the mill operations have resulted in a gain or loss and it is only at the end of the season that a gain or loss *for the season* can be determined.

14 In addition, in the cost of rough rice processed during any month, there is an additional item of the cost of the milling of such rice. The cost of milling rice depends upon many factors so that it is impossible to determine what has actually been the cost of milling any particular lot of rice. There are many varieties of rice, some of which have longer grains than others, and some of which have thicker or heavier grains than others. Different processes of milling must be used for each different kind and variety of rice, and where the plaintiff and other millers have on hand varied and sundry varieties and kinds of rice it is necessary in the operation of the mill to change quickly from one kind of rice to another as the milling of one lot of rice is completed and the milling of another kind begun. In addition, lots of rice of the same variety will vary the one from the other due to the varying amounts of moisture in the rice, varying conditions under which the rice was harvested, and many other factors, which makes it necessary to vary the operation of the rice mill in many respects as between lots of rice. In addition, the output of a mill in barrels per day varies because of all these factors very considerably. Under all the circumstances, it is impossible for a mill to determine the cost to it of the milling of any particular lot of rice, which cost must necessarily enter into a deter-

mination of whether in selling the clean rice it has included any part, or what part, of the processing tax in the price for which it sells its clean rice and rice products.

In addition, owing to the peculiar nature of the rice business and the customary manner of selling rice that prevails in the rice industry, it is impossible for the plaintiff and other rice millers to determine the cost of any particular rice that has gone into the clean rice that is covered by any particular sale. The clean rice that is obtained from any particular lot of rough rice is not sold in the trade by itself alone. At the beginning of the season plaintiff and other rice mills know approximately the different kinds of rice that they will have during the season. In the early part of the season and as the season progresses, plaintiff and other millers make up samples of rice of the kind that they have determined they will be able to supply during the season. Owing to the varied character of clean rice out-turn from rough rice, these samples are made up of mixtures of different kinds of rice. It has been found impossible to make up such samples entirely of one kind of rice from one lot of rough rice as it is impossible to match in any appreciable quantity a sample of one lot of clean rice with another lot of clean rice. Clean rice is sold on these samples and when an order is obtained for a given amount of clean rice of a certain sample, the plaintiff and other rice millers then find what different lots of clean rice they have on hand which by mixing will produce the samples upon which the sale has been made. As a result, when a sale of clean rice is made, the order is filled by a mixture of clean rice which is made up from many different lots of clean rice. These different lots of clean rice have been milled from different lots of rough rice for which different prices have been paid. As a result the rice that goes into a clean

rice sale has come from many different sources and has been milled under many different conditions and it is impossible to tell exactly the cost of such clean rice under the circumstances. In addition, part of the clean rice obtained from a lot of rough rice may be carried for many months and mixed on different sales with innumerable combinations of other lots of clean rice so that it is impossible to trace through the history of rice processed during any month to determine what price was obtained for it, whether it was sold at a profit or a loss, and what part, if any, of the processing tax has been passed on to the purchaser.

Furthermore, there is no way in which the cost of a lot of rough rice can be allocated between the various grades of rice and the various rice products produced from such lot except by speculation or the use of arbitraries.

In short, it is impossible to determine, statistically or otherwise, where the ultimate burden of the processing tax falls—how much of it is paid by the consumer, how much by the producer, or how much by the processor.

In view of the above facts, the purported remedy given by Section 21(d) of said Agricultural Adjustment Act is wholly inadequate and is in fact a statutory denial of any legal remedy at all.

13.

In addition, the conditions imposed upon the right of the plaintiff to recover taxes paid by it must, under Section 21(d) be established to the satisfaction of the Commissioner of Internal Revenue, and no provision is made for judicial review. The transcript of the hearing before the Commissioner of Internal

Revenue is the sole record of the case on appeal to the Courts. The effect of such section is therefore to limit the function of the judicial review to the determination of whether there was any evidence submitted to the Commissioner of Internal Revenue tending to support the findings of the Commission. Said Section 21(d) therefore deprives the plaintiff of its property without due process of law in violation of the Fifth Amendment to the Constitution.

14.

Under said Section 21(d) of said Agricultural Adjustment Act, if the processing tax has been either passed on or passed back by the plaintiff, then the plaintiff cannot maintain any action to recover the tax, if it is ultimately determined to be invalid, either for its own account or for the account of the persons to whom the processing tax has been thus passed on or passed back by the plaintiff; nor can the persons to whom the processing tax has been thus passed on or passed back maintain such an action on their own account, but all right of action by a one to recover the tax, if it has been passed on or passed back, has been wholly taken away by said amendments to said Agricultural Adjustment Act. Moreover, Section 21(a) of said Act and Section 405 of the Revenue Act of 1935 deprive the Courts of power to render declaratory judgments with respect to such alleged taxes. By reason of the impossibilities of proof hereinabove referred to, the practical effect of said Act will be to deny taxpayers and the plaintiff all means of securing a judicial decision as to the constitutionality of the processing taxes, unless the Court grants the relief herein sought.

15.

Plaintiff further shows that by Section 30 of said Amendment of August 24, 1935, Section 21(a) was

added to said Act, which in substance provides that no suit to enjoin the collection of any tax imposed by said Act shall be maintained. Plaintiff alleges that said section is not intended to apply, and does not apply, to the injunction prayed for by this plaintiff inasmuch as plaintiff has no adequate remedy at law. Plaintiff alleges, however, that if said section should be interpreted as providing that no injunction should be granted to the plaintiff as prayed for in this cause, then the said section, together with the other provisions of said Act, is invalid and in violation of the Fifth Amendment to the Constitution of the United States, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes will be collected from the plaintiff and the plaintiff will have no remedy by which he may recover said taxes, and if said section is so interpreted, he will have no remedy to prevent the collection of said unlawful taxes, and will be forever deprived of the right in any manner to test the constitutionality of such taxes.

17 16.

Said Section 21(d) further denies to the plaintiff a complete and adequate remedy at law, because a multiplicity of claims and suits would be required to enforce such rights as are granted thereunder and because said subsection requires that the facts required to be proved thereunder be established to the satisfaction of the Commissioner of Internal Revenue and makes no provision for a judicial review of his decision.

17.

A refund of processing taxes paid by the plaintiff could not actually be obtained even if it were possible

for the plaintiff to prove the negative facts required by subsection (d) of Article 21, because Congress has not appropriated funds for the payment of such refunds and plaintiff believes, that in view of the aggregate amount involved, there is a reasonable doubt whether such appropriation would ever be made.

18.

Plaintiff is ready, able and willing and hereby offers and agrees that in the event the injunctive relief herein prayed for is granted, it will deposit at such time and in such manner as this Court shall direct the said sums claimed to be due from plaintiff for processing taxes on account of the rice processed by plaintiff during the month of September, 1935, and the plaintiff further offers and agrees that at the end of each month hereafter it will file processing tax returns with the defendant as required by existing laws and regulations and that as and when processing taxes under said returns become due and payable according to existing laws and regulations or any extension lawfully granted to the plaintiff, it will deposit the amount of such taxes in such manner as the Court may direct, all such deposits to abide the final decree in this cause.

Wherefore, plaintiff being without an adequate remedy at law prays:

1. That process issue and be served upon the defendant requiring him to appear and answer this bill, but not under oath, and answer under oath being hereby expressly waived;

2. That pending the hearing of the application for a preliminary injunction hereinafter prayed for, a temporary restraining order issue immediately enjoining and restraining the defendant until the hearing

of its application for a preliminary injunction or until the further order of this Court, from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in Court or otherwise, any processing taxes under and pursuant to said Agricultural Adjustment Act and any interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

3. That notice issue to the defendant advising him that plaintiff is hereby applying for a preliminary injunction and that plaintiff's said application will be heard at a time to be fixed by the Court in said notice, and that upon said hearing a preliminary injunction pending the final disposition of this case be issued enjoining and restraining the defendant from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint procedings, in Court or otherwise, any processing taxes under and pursuant to said Agricultural Adjustment Act and any interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

4. That at the final hearing of this cause said preliminary injunction be made permanent, and if said preliminary injunction shall not have been granted, then that a permanent injunction be granted permanently restraining and enjoining the defendant from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in Court or otherwise, any processing taxes under and

pursuant to said Agricultural Adjustment Act and any interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

5. That at the final hearing it be adjudicated that the provisions of said Agricultural Adjustment Act providing for the levying, assessing and collecting of said processing taxes against and from the plaintiff are invalid, unlawful and unconstitutional on each and every one of the grounds upon which they are hereinabove alleged to be unlawful, invalid and unconstitutional; and that the defendant has no lawful right to attempt in any manner to collect said
19 processing taxes from the plaintiff or any of the penalties or interest thereon purported to be provided for in said Agricultural Adjustment Act;

6. And plaintiff prays for such other and further relief, both general and special, to which it may be justly entitled.

(Signed) RICKERT RICE MILLS, INC.,
By FRED W. RICKERT, President.
(Signed) JOHN P. BULLINGTON,
(Signed) HOMER L. BRUCE,
BAKER, BOTTS, ANDREWS & WHARTON,
By (Signed) JNO. P. BULLINGTON,
(Seal) Attorneys for Plaintiff.

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, on this day personally appeared Fred W. Rickert, who, having been by me first duly sworn, stated on oath that he is the President of Rickert Rice Mills, Inc., a corporation,

plaintiff in the above cause, and that he has been duly authorized by said corporation to make this affidavit for and in its behalf; that he has read the foregoing and above bill and knows the contents thereof and that the facts therein set out are true, except as to such facts as are therein stated on information and belief, and that as to those facts so stated to be on information and belief, he believes them to be true.

(Signed) FRED W. RICKERT.

Subscribed and Sworn to before me, this 25th day of October, 1935.

(Signed) A. R. CHRISTOVICH,
(Seal) Notary Public in and for Orleans Parish, Louisiana.

20 EXHIBIT "A".

Issued April 18, 1935.

United States Department of Agriculture,
Agricultural Adjustment Administration.

Administrative Rulings Relating to the 1935 Southern Rice Production Adjustment Program.

Explanation.

These Administrative Rulings apply to and are part of the Southern Rice Production Adjustment Contract and documents pertaining thereto.

If any of the provisions are not understood, the Community or County Committee should be consulted. No producer should make out and submit to his Community or County Committee an Application or a Contract or other documents pertaining thereto with-

out knowing exactly what he must do in order to receive the benefits of the program.

I. Definitions.—As used in the Southern Rice Production Adjustment Application, Declaration, Contract, Schedule, and these Administrative Rulings:

(a) "Person," "tenant," "landlord," "producer," and "well or canal operator," include individuals, copartnerships, and corporations; and where it is required by the context, the singular shall include the plural.

(b) "Farm" means one contiguous tract of land operated as one unit substantially separate from any other such tract of land.

(c) "Producer" includes persons owning and operating their own farms; tenants operating farms rented for cash; tenants operating farms under a crop-share lease, contract, or agreement; landlords leasing to share tenants; corporations, copartnerships, or individuals furnishing water for production of rice on a share basis; and such other persons or classes of persons as the Secretary may determine to be eligible to sign Southern Rice Production Adjustment Contracts.

(d) "Participation in the production of rice" means sharing as a producer in any manner in the production of rice on a farm.

(e) "Farming Operation" means the production of rice or the participation in the production of rice by a producer.

(f) "Application" means any Application for Rice Acreage Allotment (forms Rice 1 and 2) heretofore or hereafter executed by any producer. "Application

serial number" means the serial number of any such Application.

(g) "Declaration" means any 1935 Southern Rice Declaration of Farm Acreage (form Rice 30) heretofore or hereafter executed by any producer. The "farm serial number" means the serial number of any such Declaration.

(h) "Schedule" means any Producer's Schedule of Rice Acreage (Form Rice-37) heretofore or hereafter executed by any producer. Each such Schedule shall bear the same serial number as the Contract executed by the producer who executes the Schedule.

(i) "Contract" means any 1935 Southern Rice Production Adjustment Contract (Form Rice-36) heretofore or hereafter executed by any producer. The "Contract serial number" means the serial number of any such Contract.

21 (j) "1935" means the period from January 1, 1935 to December 31, 1935.

(k) "1934" means the period from January 1, 1934 to December 31, 1934.

(l) The term "State base period" means the period of calendar years 1929 to 1933, inclusive.

(m) The "State Allotment" shall be 135,000 acres for Arkansas, 364,500 acres for Louisiana, and 142,500 acres for Texas. The "State Quota" shall be 1,834,-722 barrels for Arkansas, 3,898,333 barrels for Louisiana, and 2,010,833 barrels for Texas.

(n) The term "base period" in Arkansas and Louisiana means the period of the calendar years

1929 to 1933, inclusive, and in Texas the years 1931 to 1933, inclusive.

(o) The "production history" of a producer means, as the context may require, the producer's rice acreage or rice production, or both, for the base period as adjusted to the official figures and accepted by the State Committee.

(p) The "producer's Allotment" and the "producer's Quota" means respectively the rice acreage and the rice production assigned by the State Committee, acting for and on behalf of the Secretary, to the producer for 1935 and determined according to the procedure set forth in Administrative Ruling II hereof.

(q) The "acreage allocated" by the producer means that part of a producer's allotment which, in a Declaration, he allocates to a given farm as a basis for determining his share of the total rice acreage planted on that farm in 1935.

(r) "Producer's share of the rice acreage planted" and the "Producer's share of the acreage planted to rice in 1935" each means with respect to any farm, that acreage which bears the same ratio to the total rice acreage planted on that farm in 1935 (as determined upon checking compliance with the Contract in the manner prescribed by the Secretary) that the acreage allocated by the producer to that farm in a Declaration bears to the total rice acreage allocated to that farm in such Declaration.

(s) The "Secretary" means the Secretary of Agriculture of the United States.

(t) "Rice Section" means the Rice Section of the Agricultural Adjustment Administration.

(u) "Official figures" means the records of acreage and production prepared by the United States Department of Agriculture.

(v) A "barrel" means 162 pounds of rough rice.

(w) A "bushel" means 45 pounds of rough rice.

II. Determination of Allotments and Quotas.—1. The allotment of a producer shall be determined by each State Committee as follows: (a) Add the acreage of rice planted annually by each producer for his own account during the base period, after adjustment of acreage of all producers to the official figures for each state for each of the years of the base period; (b) Divide the total thus secured by five (5) in Louisiana and in Arkansas, and the total thus secured by three (3) in Texas; (c) Reduce the result obtained by 20 per cent in Louisiana and in Arkansas and the result obtained by 22 percent in Texas.

The total allotments assigned to producers in each state shall not in any event exceed the state allotment for that state.

2. The quota of a producer shall be determined by each State Committee as follows: (a) Add the number of barrels of rough rice produced annually by each producer for his own account during the base period, after adjustment of the production of all producers to official figures for each state for each of the years of the base period; (b) Divide the total thus secured by five (5) in Louisiana and in Arkansas, and the total thus secured by three (3) in Texas; (c) Reduce the result obtained by 20 percent in Louisiana and in Arkansas and the result obtained by 22 percent in Texas.

The total quotas assigned to producers in each state shall not in any event exceed the state quota for that state.

3. If the total of allotments and quotas determined according to the provisions of sections 1 and 2 of this numbered ruling, in any state, is less than the State Allotment and State Quota such excess may be allocated to producers by the State Committee, subject to approval by the Secretary or his authorized agent.

22 4. The Allotment and Quota are based upon the personal production history of the producer, regardless of where the rice was produced and are the measure of such history. The producer's production history shall not be transferred except as the State Committee shall, in writing, approve transfers made pursuant to the provisions of subsections a, b, and c of this numbered paragraph 4 of Administrative Ruling II. All requests for transfer of production history shall be in writing, signed by, or on behalf of the producer by his duly authorized agent, and approval thereof shall be in writing signed by at least two members of the State Committee. In no event shall the State Committee approve the transfer of production history by reason of foreclosure, execution or any forced sale.

(a) If a producer has died or has been declared legally incompetent by a Court of competent jurisdiction and has not executed, prior to the date of such death or incompetency, an Application for an allotment and quota, his records of production may be used by such heirs or devisees, or such member of the family of such deceased producer or by such members of the family of such incompetent producer as are continuing the farming operation of the deceased or incompetent producer, upon their furnishing proof of such relation-

ship and succession to the producer's farming operation.

(b) If a well or canal operator voluntarily sells his well or canal system and has not executed an application, his production history shall be transferred to such successor, provided that the former well or canal operator was not engaged in farming operations in 1934.

(c). If a partnership is dissolved before an application for an allotment and quota has been executed by or on behalf of the partnership, its records of rice production for the base period shall be divided among the partners in such proportions as is agreed upon by the partners or their authorized representatives in writing submitted to the State Committee.

5. In all figures representing final determination of individual allotments and quotas, fractions amounting to one-half a unit or less shall be dropped and fractions amounting to more than one-half a unit shall be considered a whole unit.

6. If a producer during the base period had operated in more than one state, he shall apply for an allotment and quota to the State Committee of each state in which he had farmed during the base period. Only the history earned by the producer in that state shall be presented to the State Committee in his Application. No producer shall be assigned Allotments and Quotas in two or more states, larger in the aggregate, than the Allotments and Quotas assignable to him in one state, had all of his farming operations been confined to that one state.

7. The sum of all Allotments and of all Quotas within a State shall not in any event exceed the State Allotment and Quota, respectively.

III. Transfer of Allotment and Quota.—The producer's Allotment and Quota shall not be transferred except as the State Committee shall in writing approve transfers made pursuant to the provisions of subsections a, b, c, and d of this Ruling III. In no event shall the State Committee approve the transfer of an Allotment or Quota by reason of foreclosure, execution, or any forced sale. All requests for transfer shall be made in writing signed by or on behalf of the producer by his duly authorized agent, and approval thereof shall be in writing signed by at least two members of the State Committee.

(a) If a producer dies or has been declared incompetent by a Court of competent jurisdiction after executing an Application but before executing a Contract, his allotment and quota may be transferred to such heirs, devisees, or such members of the family of such deceased producer or such members of the family of such incompetent producer as are continuing the farming operations of the deceased or incompetent producer, upon their furnishing proof of such relationship and succession to the producer's farming operation.

23 (b) If a producer voluntarily withdraws, either wholly or in part, from the production of rice after executing an Application but before executing a Contract, he may transfer all or part of his Allotment and Quota to such persons as are continuing his farming operation, upon proof of such withdrawal and succession.

(c) If a producer has become disabled and has retired from the production of rice after executing an Application but before executing a Contract, he may transfer all or part of his Allotment and Quota to such

person as is continuing his farming operations upon proof of such disability, retirement, and succession.

(d) Upon dissolution of a partnership, after an Application has been executed by or on behalf of the partnership, but before a Contract has been executed by or on behalf of the partnership, the Allotment and Quota shall be divided among the partners in such proportions as is agreed upon by the partners or their duly authorized representatives in writing submitted to the State Committee.

IV. Use of Allotment and Quotas by Well or Canal Operators.—If a well or canal operator has an allotment and quota assigned to him by the State Committee on the basis of his personal history as a furnisher of water on a crop share basis, such well or canal operator shall not change his status so as to use such allotment and quota in a capacity other than as a furnisher of water on a share crop basis.

V. Signing of Application, Declaration, Contracts, and Other Documents by a Person in a Representative Capacity.—

(1). In the event any document is to be executed on behalf of a Corporation, it shall be signed on behalf of the Corporation by an officer of the Corporation, who shall state his title, and affix the corporate seal to the Contract, (If the Corporation has no corporate seal, the following statement in writing shall appear over the signature, "No corporate seal required or adopted,") or by a representative of the corporation other than an officer, who has been authorized by the corporation to execute the contract by power of attorney, under seal, duly executed on behalf of the corporation on a prescribed form and

filed with the Comptroller of the Agricultural Adjustment Administration at Washington, D. C., or attached to the contract, which authorization shall be considered a part of the contract documents.

(2) In the event a document is to be signed by an executor, administrator, guardian of an incompetent person, receiver, or other person appointed by a Court in a fiduciary capacity, there shall be furnished either the original or a certified copy of the Court order of appointment or a certificate on a prescribed form showing that such person was duly appointed as such fiduciary and that the appointment is still in full force and effect.

(3) Where a document is signed by a manager or an agent for a producer, the original or a certified copy of a Power of Attorney, on a prescribed form, authorizing the manager or agent so to sign shall be furnished.

(4) If the producer is a Governmental body or agency, there shall be attached to the document a certified copy of a resolution of the Board or other authority authorized by statute to lease and contract in regard to the land and personal property covered by the contract, authorizing the execution of such document by the person executing the document on its behalf.

(5) When one producer has several documents to be signed by the same agent or attorney, a properly executed power of attorney may be filed with the Comptroller of the Agricultural Adjustment Administration to cover all such cases, and shall be considered as a part of each document so signed.

(6) A document to be signed for a partnership shall be executed in the name of the partnership and of each partner as an individual, by each member of

the partnership, or on behalf of each partner
24 who does not personally sign, by an agent duly authorized to so sign by a Power of Attorney, on a prescribed form.

VI. Pledge of Adjustment Payments.—Adjustment payments may not be assigned under any condition. This is forbidden by the Contract, as well as prohibited by law.

However, the producer's right to adjustment payments under the Contract may be pledged in order to obtain funds (or credit) for carrying on the current operation of the farm. The expression "funds" (or credit) for carrying on the current operation of the farm and "current production credit" means funds or credit to meet any necessary expense of preparing of land, planting, cultivating, watering, harvesting, and marketing of the rice crop grown in the year 1935. Without in any way limiting the exclusiveness of the above definition, the expression shall not include cash rent or debts incurred in connection with the production of past crops.

No pledge of any producer's right to adjustment payments under his contract for any purpose other than to procure current production credit as defined above shall give rise to any obligation under the Contract upon any payee designated therein by the producer to distribute such payment, when and if accepted by such payee, to the person claiming to hold such a pledge not given for current production credit.

Dated April 18, 1935.

R. G. TUGWELL,
Acting Secretary of Agriculture.

25 EXHIBIT "B".

Form Rice 36,
U. S. Department of Agriculture,
Agricultural Adjustment Administration,
Rice Section.
Form approved by Comptroller General, U. S.,
May 1, 1935.

1935 Southern Rice Production Adjustment Contract.

(Pursuant to and to effectuate the purposes of the Agricultural Adjustment Act, approved May 12, 1933, as amended, hereinafter referred to as the Act.)

I. Performance by Producer:

1. The undersigned producer (and each and all of them if more than one signs this instrument) hereby offer(s) to enter into a contract with the Secretary of Agriculture (hereinafter referred to as the "Secretary") upon the terms and conditions hereinafter set forth and subject to such regulations or administrative rulings (which shall be part of the terms and conditions of this contract) as have been heretofore or may hereafter be prescribed by the Secretary relating to 1935 Southern Rice Production Adjustment Contracts. This contract shall apply to every farm upon which the producer participates in any manner in the production of rice in 1935 (hereinafter referred to as "the farm(s) covered by this contract"). This offer shall become a binding contract upon its acceptance by the Secretary.

2. The producer,

(a) Represents that he has allocated to each farm upon which he will participate in any manner in the

production of rice in 1935 some part of his allotment and that the total acreage allocated by the producer to all such farms does not exceed his allotment;

(b) Agrees that he will not share or participate in any manner in the production of rice in 1935 on any farm to which he has not allocated a portion of his allotment;

(c) Agrees that for the purposes of checking compliance and making payments under this contract "the producer's share of the acreage planted to rice in 1935" on each farm covered by this contract shall be that acreage actually planted to rice on such farm in 1935 which bears the same ratio to the total acreage planted to rice on such farm in 1935 that the acreage allocated by the producer to such farm bears to the total acreage allocated thereto by all persons participating in the production of rice thereon;

(d) Agrees that his total share of the acreage planted to rice in 1935 on all the farms covered by this contract shall not exceed his allotment;

(e) Agrees that the acreage permitted under this contract to be planted to rice in 1935 shall be farmed in a workmanlike manner throughout 1935;

(f) Applies for membership in the Rice Production Control Association organized pursuant to Form Rice 35 in each County or Parish in which a farm covered by this contract is located;

(g) Agrees to permit access by any authorized agent of the Secretary to the farm(s) covered by this contract, and to all fiscal books, records, and documents, regardless of where located, pertaining to the

production and/or sale of rice on or from any
26 and all of such farms, and expressly waives any right to have such records kept confidential;

(h) Agrees not to sell, pledge, transfer, or assign, in whole or in part, this contract or his right to or claim for payments under this contract, and not to execute any power of attorney to collect such payments, and any sale, pledge or assignment, order or power of attorney shall be null and void, except that the producer may pledge or hypothecate his right to any adjustment payments under this contract for the purpose of obtaining funds (or credit) for carrying on the current operation of the farm(s) covered by this contract (hereinafter referred to as "current production credit") and such pledge or hypothecation shall operate to establish an interest or right on the part of the pledgee in and to said adjustment payments as against any other person or persons, but the pledge or hypothecation thereof shall not alter the provisions of paragraph 5 that all adjustment payment checks drawn in compliance with this contract shall be made payable to the payee therein stipulated. If the adjustment payments herein provided for shall have been pledged by the producer for current production credit, the producer, or if a payee is designated in paragraph 5 hereof and accepts such payment, then such payee if notified in writing of the pledge, shall receive the adjustment payment in trust to pay therefrom to the pledgee the amount of the obligation owing for current production credit secured by such pledge and to pay the balance of said payment to the producer. If a payee other than the producer is named in paragraph 5 hereof, and if such payee shall not have been notified of any pledge of the adjustment payments for current production credit made pursuant to the terms of this numbered paragraph, such payee shall receive such payments in trust to pay the whole amount

thereof to the producer, it being expressly understood and agreed that the Secretary shall have no duty or obligation to see that distribution is made in accordance with the foregoing provisions, but shall have the right to enforce the performance of said trust by the payee;

(i) Represents that the statements contained herein are true to the best of his information and belief. Without limitation of any other right or remedy of the Secretary conferred by law or this contract, a material misstatement herein or in any information furnished by the producer in connection with this contract or any noncompliance by the producer with any of the terms hereof, or with any applicable regulation or administrative ruling which has been or may hereafter be prescribed by the Secretary with reference to 1935 Southern Rice Production Adjustment Contracts shall be grounds for termination of this contract by the Secretary. The determination of the Secretary that any such misstatement or noncompliance has occurred shall be final and conclusive. In the event of termination of this contract by the Secretary, the producer shall return to the Secretary all payments theretofore made under this contract, together with all costs incident to the collection thereof.

II. Performance by Secretary:

3. Amount of Payments.—The Secretary shall, as a consideration for the performance by the producer of all the terms and conditions of this contract, and in the manner and at the times specified in paragraph 4 hereof, make

(1) A first adjustment payment at a rate of 81 cents per barrel of rice, and

(2) A second adjustment payment at a rate per barrel of rice, uniformly applicable to all such contracts, to be determined by the Secretary,

27 upon an amount of rice determined in the manner specified in sub-paragraph (a) or (b) of this numbered paragraph, whichever shall apply:

(a) If the producer's total share of the acreage planted to rice in 1935 on all the farm(s) covered by this contract is not more than 100 per cent nor less than 85 per cent of the producer's allotment, such payments shall be made upon that number of barrels of rice which equals 85 per cent of the producer's quota.

(b) If the producer's total share of the acreage planted to rice in 1935 on all the farm(s) covered by this contract is less than 85 per cent of the producer's allotment, such payments shall be made upon that number of barrels of rice which bears the same ratio to the producer's quota that the producer's total share of the acreage planted to rice in 1935 on all such farms bears to the producer's allotment.

4. Time of Payments.

(a) The first adjustment payment shall be made as soon as practicable after August 1, 1935, provided that proof satisfactory to the Secretary, of compliance with the terms and conditions of this contract, has been submitted to the Secretary or his authorized agent.

(b) The second adjustment payment shall be made as soon as practicable after December 1, 1935, provided that proof satisfactory to the Secretary, of compliance with the terms and conditions of this contract, has been submitted to the Secretary or his authorized agent.

5. (a) All adjustment payments hereunder are for the benefit of the producer and shall be made only to the producer unless the producer shall, by naming another person in this numbered paragraph, direct that such payments be made to the person so named, in which event the payments shall be made by check drawn payable to the person so named who shall receive them subject to the provisions of this contract, and particularly subject to the provisions of subparagraph (h) of paragraph 2 hereof. If the person so named shall have died or shall refuse to accept such payment, or shall for any reason be unable to receive and distribute such payment subject to the provisions of this contract then such payment shall be made to the producer, who likewise shall receive such payments subject to the provisions of this contract and particularly subject to the provisions of subparagraph (h) of paragraph 2 hereof.

(Stamp State and County code above.)

State..... Parish }.....
County, }
Community..... Contract }
Serial No.}.....

5. (b) Designated payee .....
of.....
(Address of payee)

III. Signature(s) of Producer(s).

6. In Witness Whereof, each of the undersigned has hereunto set his hand on the date indicated opposite his signature.

...., 1935.
(Witness) (Date of Producer's signature)

....
(Signature of Producer) (Application No.)

Address of Producer (Rural Route No.) .... (Box No.) .... (Post Office) ..... (State) .....

...., 1935.
(Witness) (Date of Producer's signature)

....
(Signature of Producer) (Application No.)

Address of Producer (Rural Route No.) .... (Box No.) .... (Post Office) ..... (State) .....

IV. Certification of Committees.

We Hereby Certify that we have examined the foregoing offer and that, to the best of our information and belief, the total acreage allocated by the producer to all the farm(s) covered by this contract does not exceed the producer's allotment, and hereby recommend that the foregoing offer be accepted by the Secretary.

.....
(For Community Committee)

.....
(For County Committee)

.....
(For State Committee)

.....
(For Community Committee)

.....
(For County Committee)

.....
(For State Committee)

Date....., 1935. Date....., 1935. Date....., 1935.

V. Acceptance by Secretary.

In consideration of and in reliance upon the agreements of the producer herein set forth and the repre-

sentations made by the producer in and in connection with this contract, this offer is hereby accepted, this .....day of ....., 1935.

HENRY A. WALLACE,
Secretary of Agriculture, for and on behalf of the United States,

By .....,
Representative of Secretary of Agriculture.

VI. State Committee's Certificate of Compliance.

The undersigned State committeemen certify that the producer's total share of the acreage planted to rice in 1935 on all farm(s) covered by this Contract does not exceed the producer's allotment, and further certify that the producer's allotment and quota and the producer's total share of the acreage planted to rice in 1935 on all farms upon which the producer is participating in the production of rice in 1935 are correctly stated in items 1, 2, and 3, respectively, of part VIII below, and further certify that to the best of their information and belief the producer has fully complied with all terms of this Contract and all regulations and administrative rulings issued by the Secretary applicable up to and including the date of this certificate.

Date ....., 1935.

.....
(For State Committee)

.....
(For State Committee)

29 VII. Producer's Certificate of Compliance.

The producer certifies that his total share of the acreage planted to rice in 1935 on all farms upon which he is participating in any manner in the production of

rice does not exceed his allotment, that his allotment and quota, and his total share of the acreage planted to rice in 1935 on all farms on which he is participating in any manner in the production of rice in 1935 are correctly stated in items 1, 2, and 3, respectively, in part VIII of this contract, and further certifies that he is not sharing in the production of rice on any farm to which he has not allocated part of his allotment, that all farms covered by this Contract are being farmed in a workmanlike manner, and that he has fully complied with all other terms of this Contract, and with all regulations and administrative rulings issued by the Secretary, applicable up to and including the date of this certification.

..... (Witness)
Date....., 1935.

....., (Producer.)

VIII. Certified Basis for Determining Payments.

1. Producer's allotment .....(acres) .....
2. Producer's quota .....(bbl.) .....
3. Producer's share of acreage measured) .....
4. Quota percentage (item 3 ÷ item 1).... .....%*
5. Number of barrels for payment (item 4 times item 2) ....

*If the above percentage is not more than 100 nor less than 85 per cent, then 85 per cent shall be used.

Do not write in this blank; for use by Comptroller's Office.

Computation of payments:

1935 first adjustment payment Item 5 times 81¢ per bbl. ....$.....

1935 second adjustment payment, Item 5 times ....¢ per bbl.....$.....

Total .....$.....

Do Not Write in Space Below.

Certificate of Comptroller.

Audited and approved for 1935 first adjustment payment in the amount of ..... $.....

JOHN B. PAYNE,
Comptroller,

By .....,
Auditor.

Schedule No. .....

Date.....

Paid ..... by check on Treasurer of the United States in favor of payee or payees named thereon.

Check No..... $.....

Certificate of Comptroller.

Audited and approved for 1935 second adjustment payment in the amount of ..... $.....

JOHN B. PAYNE,
Comptroller,

By .....,
Auditor.

Schedule No. .....

Date.....

Paid ..... by check on Treasurer of the United States in favor of payee or payees named thereon.

Check No..... $.....

(Any intentional misrepresentation of fact made in this contract for the purpose of defrauding the United States will be subject to the criminal provisions of the United States Code.)

30 EXHIBIT "C."

Sec. 31. (a) No suit, action, or proceeding (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any Court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (d) of this section, may be reserved in the Court's order.

(b) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regulations of the Secretary with the approval of the President prior to the date of the adoption of this amendment, are hereby legalized and ratified, and the assessment,

levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which have accrued and remain unpaid on the date of the adoption of this amendment shall be assessed and collected pursuant to section 19, and to the provisions of law made applicable thereby. Nothing in this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary of Agriculture or of the President done or made prior to the date of the adoption of this amendment.

(c) The making of rental and benefit payments under this title, prior to the date of the adoption of this amendment, as determined, prescribed, proclaimed and made effective by the proclamations of the Secretary of Agriculture or of the President or by regulations of the Secretary, and the initiation, if formally approved by the Secretary of Agriculture prior to such date of adjustment programs under section 8 (1) of this title, and the making of agreements with producers prior to such date, and the adoption of other voluntary methods prior to such date, by the Secretary of Agriculture under this title, and rental and benefit payments made pursuant thereto, are hereby legalized and ratified, and the making of all such agreements and payments, the initiation of such programs, and the adoption of all such methods prior to such date are hereby legalized, ratified, and confirmed as fully to all intents and purposes as if each such agreement, program, method, and payment had been specifically authorized and made effective and the rate and amount thereof fixed specifically by prior Act of Congress.

(d) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under thi title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the Court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be refunded or credited to any person (not

a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (a) and (b) of section 16, had the tax terminated by proclamation pursuant to the provisions of section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish to the satisfaction of the Commissioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which
32 the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the Court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any Court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held invalid a claim therefor (conforming to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2)

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no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such Courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, on jurisdiction of such Courts based upon the amount in controversy.

(e) In connection with the establishment, by any claimant, of the facts required to be established in subsection (d) of this section, the Commissioner of Internal Revenue is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda, relative to any matter affecting the findings to be made by the Commissioner pursuant to subsection (d) of this section, to require the attendance of the claimant or of any officer or employee of the claimant, or the attendance of any other person having knowledge in the premises, and to take, or cause to be taken, his testimony with reference to any such matter, with power to administer oaths to such person or persons. It shall be lawful for the Commissioner, or any collector designated by him, to summon witnesses on behalf of the United States or of any claimant to appear before the Commissioner, or before any person designated by him, at a time and place named in the

summons, and to produce such books, papers, correspondence, memoranda, or other records as
33 the Commissioner may deem relevant or material, and to give testimony or answer interrogatories, under oath, relating to any matter affecting the findings to be made by the Commissioner pursuant to subsection (d) of this section. The provisions of Revised Statutes 3174 and of Revised Statutes 3175 shall be applicable with respect to any summons issued pursuant to the provisions of this subsection. Any witness summoned under this subsection shall be paid, by the party on whose behalf such witness was summoned, the same fees and mileage as are paid witnesses in the Courts of the United States. All information obtained by the Commissioner pursuant to this subsection shall be available to the Secretary of Agriculture upon written request therefor. Such information shall be kept confidential by all officers and employees of the Department of Agriculture, and any such officer or employee who violates this requirement shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both, and shall be removed from office.

(f) No refund, credit, or abatement shall be made or allowed of the amount of any tax, under section 15, or section 17, unless, within one year after the right to such refund, credit, or abatement has accrued, a claim for such refund, credit, or abatement (conforming to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled to such refund, credit, or abatement, except that if the right to any such refund, credit, or abatement accrued prior to the date of the adoption of this amendment, then such one year period shall be computed from the date of this amendment. No interest shall be allowed or paid, or included in any judgment, with respect to any such claim for refund or credit.

(g) The provisions of section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax, or any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of section 317 of the Tariff Act of 1930.

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34 MOTION TO DISMISS.

Filed Oct. 28, 1935.

In the District Court of the United States for the Eastern District of Louisiana, New Orleans Division.

(Title Omitted.)

To the Honorable, the Judge of the District Court of the United States in and for the Eastern District of Louisiana:

Comes now Rufus W. Fontenot, Acting Collector of Internal Revenue, defendant in the above entitled and numbered cause, by Rene A. Viosca, United States Attorney in and for the Eastern District of Louisiana, and Robert Weinstein, Assistant United States Attorney for said District, his attorneys, with full reservation of his rights to further plead in this cause, and moves the Court to dismiss the Bill of Complaint filed herein, with costs to be paid by the Complainant

upon the following grounds and for the following reasons:

I.

That this Court is without jurisdiction to restrain or enjoin the collection of taxes herein involved, or to hear and/or determine the issues presented by said bill of complaint because:

1. Section 3224 of the Revised Statutes of the United States prohibits the maintaining in any Court of a suit for the purpose of restraining the assessment and/or collection of Federal Tax.

2. Section 21-A of the Agricultural Adjustment Act, as amended, prohibits the maintaining in any Court of a suit for the purpose of restraining the assessment and/or collection of any processing tax under the said Agricultural Adjustment Act.

3. The bill of complaint sets forth no facts which, if true, would entitle complainant to the relief prayed for in a Court of Equity.

35 4. Complainant has a plain, adequate and complete remedy in the ordinary course of law.

II.

That the United States of America is the real party in interest, which may not be sued without its consent.

III.

That there is no actual controversy between complainant and defendant or between any parties over

which this Court has jurisdiction within the purview of the Declaratory Judgment Act.

IV.

That the Declaratory Judgment Act was not intended by the Congress to be used for the litigation of questions arising under the Revenue Laws, and particularly was not intended as a means for obtaining injunctive relief.

V.

This proceeding is prohibited by the provisions of the Declaratory Judgment Act, as amended, and cannot be maintained. (Revenue Act of 1935, approved August 31, 1935, Section 405).

Dated: this 28th day of October, 1935.

(Sgd.) RENE A. VIOSCA,
United States Attorney.

(Sgd.) ROBERT WEINSTEIN,
Assistant United States Attorney.

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36 RETURN TO RULE TO SHOW CAUSE WHY TEMPORARY INJUNCTION SHOULD NOT ISSUE.

Filed Oct 28th, 1935.

(Title Omitted.)

To the Honorable the Judge of the District Court of the United States in and for the Eastern District of Louisiana:

Now into Court comes Rufus W. Fontenot, Acting Collector of Internal Revenue, Defendant in the above entitled and numbered cause, through Rene A. Viosca,

United States Attorney in and for the Eastern District of Louisiana, and Robert Weinstein, Assistant United States Attorney for said District, his attorneys, and by virtue of the rules and practice of this Court requiring the defendant in rule to file all defenses to the rule on the date set for the hearing on the application for a temporary injunction, and with full reservation of all of his rights under the pleadings in this cause, answers the rule by stating that for lack of sufficient information to justify a belief he denies all of the allegations of paragraph two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen of the Bill of Complaint, and also denies the allegations of paragraph one with the exception of the statement relative to the defendant, which statement is admitted.

Your Respondent further avers that the proceedings should be dismissed for the reasons that this Honorable Court has no jurisdiction and that the Agricultural Adjustment Act is constitutional, valid and enforceable.

Wherefore, your Respondent prays this Honorable Court to dismiss the Bill of Complaint at Complainant's costs and to refuse granting any injunction in these proceedings, and for all general and equitable relief.

(Signed) RENE A. VIOSCA,
United States Attorney.
(Signed) ROBERT WEINSTEIN,
Asst. United States Attorney.

37 Verification.

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, personally came Rene A. Viosca, who is the United States At-

torney for the Eastern District of Louisiana, who in his oath says: That in his aforesaid official capacity he is of counsel for defendant in the above case; that he has drawn the return to the rule to show cause and that all the allegations of fact therein are true and correct to the best of his knowledge, information and belief.

(Signed) RENE A. VIOSCA.

Sworn to and subscribed before me this 28th day of October, 1935.

(Signed) CLAUDE D. SHAW,
Deputy Clerk, U. S. District Court, Eastern District of Louisiana.

(Seal)

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38 ORDER CONSOLIDATING ALL CASES FOR PURPOSE OF TRIAL.

Filed Oct. 28, 1935.

United States District Court, Eastern District of Louisiana, New Orleans Division.

Docket No. 321 (Equity).

Rickert Rice Mills, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 322 (Equity).

A. B. Dore, doing business under the name of The Dore Rice Mill,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 323 (Equity).

United Rice Milling Products Co., Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 324 (Equity).

Baton Rouge Rice Mill, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 325 (Equity).

T. Simon
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 326 (Equity).

Levy Rice Milling Company, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 327 (Equity).

Farmers Rice Milling Company, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 328 (Equity).

Noble-Trotter Rice Milling Co., Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Considering the stipulation and agreement of counsel for all parties made this day in open Court;

It is Ordered that the above numbered and entitled cases be and they are hereby consolidated for the purpose of trial and that the affidavits and evidence offered in one case be considered to apply to all.

(Signed) JOHN McDUFFIE, Judge.

New Orleans, Louisiana, October 28, 1935.

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39 AFFIDAVIT OF W. M. REID.

Filed Oct. 28, 1935.

"Copy."

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, on this day personally appeared W. M. Reid, known to me, who being by me first duly sworn in terms of law deposed and said on his oath as follows:

My name is W. M. Reid. I reside in New Orleans, Louisiana, and am Executive Secretary of the Rice Millers' Association. My principal duties are the preparation and interpretation of statistical and economic data with regard to the rice milling industry. I have been engaged in the rice milling business since 1909, and from 1916 to 1928, I personally operated a rice mill. I am thoroughly familiar with the rice milling industry in all of its phases.

I have read all of the allegations contained in Section 12 of Plaintiff's bill of complaint and Equity 321, Rickert Rice Milling Company vs. Rufus W. Fontenot, Equity 322, A. B. Dore vs. Rufus W. Fontenot, Equity 323, United Rice Milling Products Company, Inc., vs. Rufus W. Fontenot and companion cases, and all

of such allegations are true and correct in every respect.

It is true that rice millers, when they purchase rough rice, consider the fact that they will have to pay a processing tax on the milling of such rough rice. However, this is simply one of the many factors entering into the miller's determination of what he ought to pay for rough rice. As a practical matter, when the rice miller negotiates for the purchase of a given lot of rice, he first estimates what he believes he could get for such rice after milling on the existing market for clean rice and rice products. He then estimates what he thinks it will cost him to process the rough rice into its various grades and products, and in this estimate is included the amount of the processing tax, as well as other taxes. Having made these estimates, he determines what he ought to pay for the rough rice. However this is not necessarily what he does pay, because each individual miller is buying in competition with other millers. Thus, if other millers are paying more than he thinks he ought to pay, he has to meet the price the others are paying, if he is to get any rice. No individual miller makes the rough rice market. It is a market made of the composite purchasing of all millers in the particular territory. While the estimates above referred to are made with regard to the market for clean rice and rice products at the time of the purchase of the rough rice, that market, however, does not necessarily control since rough rice is not ordinarily milled, and the clean rice and products sold until several months after the purchase of the rough rice.

Since the market for clean rice and rice products fluctuates from day to day and month to month, the prospects of the future market has a bearing on what the miller may have to pay for rough rice. Optimism with reference to the future market for clean rice on the part of a sufficient number of rice millers will force up the market for rough rice, and all millers will

have to meet the increased price of rough rice (if they are to have any rice at all), even though some of them may be pessimistic as to the future market.

For example, the present market price of rough rice is quite high with reference to the present market price for clean rice and rice products. In other words, using the estimates above referred to, the cost of rough rice on today's market plus estimated cost of milling (including the processing tax) is more than the miller could reasonably expect to procure for the rice and rice products made from such rough rice on the existing market for clean rice and rice products. This present day market for rough rice is not made by any individual miller, but is made by the composite of purchases by all millers in the territory. Thus, as I have previously said, while the processing tax is considered by the miller in determining what he ought to pay for rough rice, it is simply one of many factors entering into such determination, and is by no means controlling.

Furthermore, it is impossible to tell on any given purchase of rough rice how much, if at all, that price has been affected by the existence of the processing tax.

I am familiar with accounting and statistical methods, and I know of no possible method of keeping books and records in the rice business which would accurately reflect the gain or loss from the purchase, milling and sale of any given lot of rice as distinguished from the gain or loss from the aggregate of all transactions during a season. A profit or loss, however, may be estimated at any given time by the use of averages, predictions and arbitraries.

41 The rice milling business is seasonal; the season beginning on August 1st and ending on July 31st, the operations gradually increasing until the peak is reached during the months of October, November and December, and decreasing to the end of the season. For this reason as well as

others, the cost of milling varies greatly from time to time during the season. The estimated cost of milling which millers use in budgeting and determining what they want to pay for rough rice is arrived at by averaging the cost of the entire season so that this factor, when used to estimate a profit or loss on a given transaction, could never be exact, and might be very much too high or very much too low when applied to that particular transaction.

Under these circumstances, when a miller purchases a particular lot of rice, he may believe that all, or a part of the processing tax to be assessed on such rice will be absorbed by the farmer. On the other hand, he may believe that all, or a part of such tax will be absorbed by himself. However, he can never even know, much less prove, even after all the clean rice and rice products made from the particular lot of rough rice has been sold, whether he, or the farmer, or the purchaser, or all of them together has borne the ultimate economic burden of the tax. This is because any belief he may have had as to whether the burden of the tax would fall, must of necessity, have been based in part on estimates, which are in turn, based on averages, which are never accurate with respect to any given lot of rice. In addition, such belief must also be based in part on assumptions as to market conditions on clean rice and rice products, which may or may not be correct. The rough rice may go through the mill on a day when large amounts are being milled, and the cost per unit is lower than the average; or, it might go through on a day when little rice was being milled resulting in a unit cost higher than the average; or, it might go through partly on one kind of a day, and partly on another. Furthermore, the rice may not mill out what he expected, even if the market on clean rice and rice products remains the same. And, in addition, the price at which he eventually sells the clean rice and rice products may be substantially less or substantially more than the sale price on which he based his presumptions.

There is no necessary relation between the market for clean rice and for rice products, since they are sold for different purposes, and this is an added reason why the miller cannot possibly allocate the cost of a given lot of rough rice among the clean rice and rice products produced from it.

42 For example, it is entirely possible for the market on bran or hulls to be relatively high, while the market on the various grades of head rice is relatively low.

The rough rice market is affected by the clean rice and rice products market and vice versa, but it is as impossible to determine their relative affect on each other as it is to determine whether the hen or the egg came first. I know of no way of determining what either the rough rice or clean rice marked would be if there were no processing tax. I do know, however, that the individual miller cannot force down the price paid to the farmer for rough rice because of the tax, and thus force the farmer to pay all or a part of the burden of the tax. The individual miller simply pays the market price for rough rice which has been fixed by the composite action of all millers, and it would be impossible to prove whether a lowering of the rough rice market was the result of the assessment of the tax, or whether it was caused by other factors, such as a drop in time clean rice and rice products market, a composite pessimism on the part of rice millers as to the future market or other factors. The same thing is true with regard to the market for clean rice and rice products, and no individual miller can arbitrarily force that market upwards in order to pass on the tax.

(Sgd.) W. M. REID.

Sworn and subscribed to before me, the undersigned authority, this 28 day of October, 1935.

(Sgd.) HARRY R. CABRAL.

(Seal) Notary Public.

43 AFFIDAVIT OF HOMER L. BRUCE.

Filed Oct. 28, 1935.

"Copy."

State of Texas,
County of Harris.

Before me, the undersigned authority, on this day personally appeared Homer L. Bruce, who, having been by me duly sworn, stated on oath as follows:

He lives in Houston, Harris County, Texas, and is duly licensed and practicing attorney at law. He is familiar with the bills of complaint that are being presented to the United States District Court at New Orleans, Louisiana, on behalf of certain rice millers of Louisiana seeking an injunction against the collection of processing taxes on rice, having worked with his partner Mr. John P. Bullington in the preparation of said bills of complaint, and is familiar with the general practice of the rice industry of selling rice on samples and the filling of orders for clean rice by mixing rice from different lots of clean rice in the manner set out in the bills of complaint.

This affidavit is made in connection with the allegations in said bills that it is impossible for the plaintiff rice millers to comply with the requirements of Section 21 (d) of the Agricultural Adjustment Act that they shall establish that no part of the processing tax has been passed on to the consumer or taken out of the price paid the producer before they are allowed to recover any processing taxes paid.

Section 8 (3) of the Agricultural Adjustment Act gave the Secretary of Agriculture authority to issue licenses to processors, including processors of rice, and provided that the Secretary should have the right to revoke any license for violations of its terms. Section 8 (2) of the same Act authorized the Secretary to enter into marketing agreements with processors.

In the fall of 1933, the Secretary entered into a marketing agreement with members of the southern rice milling industry, and at the same time issued a license applicable to all mills. This marketing agreement and the license were in substantially the same form. Later various amendments were made to both the marketing agreement and the license.

In the marketing agreement and in the license, the Secretary of Agriculture fixed the price to be paid to farmers for rough rice, these prices being set out in Article III of the marketing agreement and license hereinafter referred to, namely, the one effective on July 21, 1934. Article IV, Section 1 of the
44 license effective July 21, 1934, set out the minimum price that millers might sell clean rice for in the domestic market and that section is as follows:

"Section 1. To effectuate the purposes of this Amended license and to aid in the carrying out and enforcement of the provisions hereof, no miller shall offer for sale, sell or deliver for domestic consumption any quantity of clean rice for an amount per pocket less than the sum of

(a) the minimum price, determined pursuant to article III and Schedule 1, for the grade, variety and quantity of the rough rice from which such clean rice was milled,

(b) the conversion charge for such quantity of rough rice and prevailing at the time of such offer, sale or delivery, and

(c) the published car lot rail rate for transporting such rough rice from the customary point of delivery to the miller's mill, and

(d) the administrative assessment for such quantity of rough rice and prevailing when such rice was milled;

Provided, however, that any miller may offer clean rice for sale for export to foreign countries, on the foregoing basis less a maximum discount of 20 cents per barrel of such rough rice and may, if the rice is actually exported, sell or deliver clean rice for export to foreign countries on said basis less said maximum discount. The determination of the Millers Committee as to whether or not clean rice is actually exported shall be final and conclusive, subject to appeal to the Secretary. Said minimum amounts, below which this section provides that clean rice shall not be offered for sale, sold, or delivered by a miller, apply f. o. b. the miller's mill.

Sec. 2. The conversion charge per barrel of rough rice shall, until and except as changed by the Secretary, be an amount equal to the sum of (a) seventy (70) cents per barrel of rough rice, (b) nine (9) cents per barrel of rough rice if standard one-hundred pound single packages are used for the clean rice, and (c) if cotton or paper inner linings or regular burlap outer slips are used for the clean rice, an additional five (5) cents per barrel of rough rice, or (d) if any other type of container is used for the clean rice, the actual invoice price for the container used. The Secretary may at any time and from time to time during the effective period, increase or decrease the amount of, and/or change the basis of computation of, the conversion charge."

One of the main purposes, if not actually the main purpose, of the Agricultural Adjustment Act and this license was to increase the price of rough rice paid the farmer, and in order to keep the rough rice price at a higher level, the Secretary attempted by this

Section 1 to fix the price that clean rice might be sold at as roughly 79¢ per barrel above the cost of the rough rice. It was extremely important to keep the clean rice up to this level in order to maintain the rough rice price. In the fall of 1934, the Secretary of Agriculture brought proceedings, according to the information and belief of the affiant, against a number of different rice mills in Louisiana and to affiant's knowledge against Bay City Rice Mills of Bay City,
Texas, a partnership composed of W. M.
45 Loving and three other partners. The case against the Bay City Mills was case No. 11-1-7, entitled In the Matter of W. M. Loving, R. Q. Pegram, S. M. Clements and L. D. Clements, Individually and as Co-partners trading under the name Bay City Rice Mills. One of the original charges against the Bay City Rice Mills was Charge No. 11, which charged in general terms that the Mill had sold clean rice for domestic consumption for an amount less than the price fixed for the sale of the clean rice pursuant to this license. This Charge 11 was later made more specific as follows:

"11. That the said Licensee since the effective date of said License has violated Section 1 of Article V of said License as in effect until July 21, 1934, 12:01 A. M. Eastern Standard Time, and Section 1 of Article IV of said License as in effect from July 21, 1934, 12:01 A. M. Eastern Standard Time on, in that said Licensee has offered for sale, sold and delivered, for domestic consumption, quantities of clean rice, to-wit: Clean rice lot numbered 36 on the books of the respondent derived from rough rice lot numbered 33 on the books of the respondent and purchased from C. E. Everitt; clean rice lot numbered 43 on the books of the respondent derived from rough rice lot number 33 on the books of the respondent and purchased from C. E. Everitt; clean rice lot numbered 123 on the books of the respondent derived from rough rice lot

numbered 153 on the books of the respondent and purchased from A. P. Powers clean rice lot numbered 124 on the books of the respondent derived from rough rice lot numbered 154 on the books of the respondent and purchased from J. R. Reed; for an amount per pocket less than the price fixed for the sale of such clean rice pursuant to said Section 1 of Article V of said License as in effect up until July 21, 1934, 12:01 A. M. Eastern Standard Time, and pursuant to said Section 1 of Article IV of said License as in effect from July 21, 1934, 12:01 A. M. Eastern Standard Time on."

The affiant, together with Mr. W. E. Davant of Bay City, Texas, represented the Bay City Rice Mills in this hearing before the representatives of the Secretary of Agriculture on these charges, which hearing was held in Houston, Texas, and again on December 27, 1934, and ran through January 2, 1935.

The Bay City Rice Mills in that proceeding took the position, and so advised the Secretary of Agriculture's representatives, that it was utterly impossible, owing to the manner in which the rice industry is conducted, through the sale of clean rice on samples made up of mixes of different lots of clean rice, as more fully set out in the bills of complaint presented to the United States District Court at New Orleans in the processing tax suits, to determine in the case of any lot of rice, whether the clean rice had been sold for 79¢ more than the rough rice had cost, or for the amount above the cost of the clean rice that
46 the Secretary required under Section 1 of Article IV.

The Secretary of Agriculture's representatives had access to all the books, vouchers and records of the Bay City Rice Mills, both in connection with its rough rice purchases and its clean rice sales and had several auditors continuously working on those records. The amount paid for the rough rice purchased from Evoritt, Powers and Reed, as set forth in said

Charge II was established. The clean rice derived from the rough rice purchased from these three producers was traced at the hearing into the sales of clean rice into which they entered and the price of clean rice sales was established. However, owing to the fact that each quantity of clean rice that went into a sale was made up of a mixture from various lots of clean rice, which were in turn produced from various lots of rough rice bought from different producers, and owing to the fact that there was, as is usual in the rice business, an almost infinite variation in the combinations of these mixes of clean rice lots, and owing to the fact that rough rice when milled produces different grades of clean rice, as set forth in the above mentioned bills of complaint, the Secretary of Agriculture was never able to show in that case whether or not the Bay City Rice Mills had obtained for the clean rice derived from the Evoritt, Powers, and Reed rough rice the amount (roughly 79c) above the cost of the rough rice that Article IV, Section 1, attempted to require the mill to get. Although that was one of the charges most vitally affecting the entire rice program in affiant's belief, and although the Secretary of Agriculture through his two attorneys who prosecuted the case and through his several auditors who were continuously working on the records of the Bay City Mills made every effort to prove the charge, the Secretary of Agriculture in his findings did not find that the charge had been proven and did not find that the Bay City Rice Mills had violated the license in the manner set forth in Charge 11.

Affiant believes, and on that belief states, that the reason the Secretary of Agriculture did not find that Charge 11 had been supported by any evidence was because it was utterly impossible practically to show whether clean rice had been sold for the amount above the rough rice cost that the license required.

The charge referred specifically to the sale of clean rice lots 36, 43 123 and 124. Evidence as
47 to the history of those clean rice lots is as set out below.

The clean rice in each case was included in various sales, each sale being represented by a separate invoice. The history of those clean rice lots was as follows: (As shown by the record in that case.)

Clean Rice Lot 36:

This rice came from rough rice lot 33 from C. E. Everitt. It was mixed with various other lots of rice and went in as a part of the rice sold and represented by the following 9 invoices: Invoice Nos. 6615, 6622, 6634, 6639, 6645, 6767, 6770, 6771 and T-162 (R. 324-326).

The rice covered by invoice No. 6615 was made up of rice from various lots as follows:

39 pockets from lot 17, fancy
125 pockets from lot 31, fancy
200 pockets from lot 36, fancy
26 pockets from lot 33, heads
26 pockets from lot 31, heads
(R. 472.)

Invoice 6622 consisted of the following:

75 pockets from lot 26, fancy
250 pockets from lot 35, fancy
175 pockets from lot 36, fancy
(R. 475.)

Invoice 6634 consisted of the following:

148 pockets from lot 34 EP
75 pockets from lot 35 EP

75 pockets from lot 36 EP
81 pockets from lot 37 EP
68 pockets from lot 38 EP
150 pockets from lot 43 EP
201 pockets from lot 45 EP
(R. 478.)

There was no evidence whatsoever as to the different lots going to make up the rice on any of the other invoices heretofore or hereafter referred to, but each invoice represented a mix from various lots.

Clean Rice Lot 43:

This lot went into invoices 6634, 6639, 6644, T-126, T-127, T-128, and P-1006 (R. 327-329). No evidence was introduced as to the component part of those invoices, except invoice 6634 above set forth, but they all consisted of mixes.

Clean Rice Lot 123:

This rice went into the following invoices:

48 Invoices Nos. 6832, 6833, T-187, T-188, 6840, T-195, 6839, T-200, 6885, 6886, T-201, T-202, T-187, T-188, and T-182 (R. 329 et seq.). No evidence was introduced as to the lots going into these invoices but they were all mixes.

Clean Rice Lot 124:

Affiant does not have the record at this time as to what invoices this lot went into but it was mixed into a number of mixed invoices.

To have traced the cost of the various lots of clean rice that went into each invoice would have been long involved and in fact practically impossible, and then to trace the cost of all rice going into all invoices into which any one of these clean rice lots went would

have involved further and innumerable records and evidence.

This is further illustrated when it is noticed that a large number of rough rice lots and clean rice lots were involved, as, for example, in Charge 11 it referred to rough rice lot as high as No. 154 and clean rice lot as high as No. 124.

No charge was made that Bay City Rice Mills did not keep accurate and complete records of its operations.

Nor was any issue made as to the fact that the selling of rice by samples and mixing rice was usual and customary.

For example, Mr. F. A. Farda, who testified as a witness for the Secretary of Agriculture, and who is the Manager of Standard Rice Company, one of the largest rice milling companies in the United States, testified as follows:

"Mr. Farda:

Well, it is not common practice, in fact, it is not a practice to make a mixture just in order to put it in a warehouse and keep it. You make the mixture when you sell your rice, get ready to sell it, you sell it on a sample and then you make your composite mixture and your lots match your sample. *That is a common practice.*

"Mr. Davant:

Is it not a practice to make up these samples practically in the beginning of the season and to send them out as types?

"Mr. Farda:
The pratice is to make hand mixes, and to send them samples, and when you sell on the samples you make your actual mixture, make it up." (R. 420-421.)

* * * *

"Mr. Farda:
The usual practice is, you don't make your mix until you have the rice sold." (R. 429-430.)

* * * *

49 "Mr. Farda:
You never make a mix until you have a sale made, because it would not be of material advantage to do so because you may not find another market for that particular blend that you make. *You therefore keep your rice in the original lots* to be in a position to make a blend of whatever the trade or market requires at that time." (R. 430.)

In connection with the above lots of clean rice, the Secretary's attorneys tried to make some allocation of the cost of rough rice to the different grades of clean rice produced as between fancy rice and head rice, but this was realized by all to be purely arbitrary allocation of cost without any real or sound basis for the same.

The above proceeding against Bay City Rice Mills was a proceeding before the Secretary of Agriculture to forfeit the license of Bay City Rice Mills for alleged violation of the license. The hearing was held before a representative of the Secretary of Agriculture.

In the foregoing affidavit the figure of 79c above rough rice cost has been referred to. That, as stated, was used only roughly. Under the license, the price for clean rice was to be the price fixed for rough rice plus the conversion charge plus the carload rail rate

for transporting rough rice to the miller's mill plus the administrative assessment of 5c per barrel. The conversion charge was 70c per barrel plus 9c per barrel if standard one hundred pound single packages were used for clean rice plus 5c per barrel if cotton or paper interlinings were used. This would make the spread between the rough rice price and clean rice price approximately 89c exclusive of the freight item.

(Sgd.) HOMER L. BRUCE.

Subscribed and Sworn to before me, the undersigned authority, by Homer L. Bruce, this 27th day of October, 1935.

(Sgd.) RAYMOND REILSON,
(Seal) Notary Public in and for Harris County, Texas.

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50 AFFIDAVIT OF L. J. BARTEL, R. F. GOULD AND J. J. MAYER.

Filed Oct. 28, 1935.

"Copy."

State of Louisiana,
Parish of Orleans.

We, L. J. Bartel, R. F. Gould, and J. J. Mayer, each first being duly sworn, deposes and says:

That we are Deputy Collectors of the Treasury Department, Internal Revenue Service, Louisiana District, working in connection with the rice processing tax division, and that the experience of each in the rice industry, prior to becoming Deputy Collectors, is as follows: L. J. Bartel has had actual experience of

approximately twenty years in buying rough rice; operation of rice milling plants, and the distribution of milled rice and by-products. R. F. Gould has had actual experience as follows: Fifteen years with the largest rice millers of the industry as Office Manager, and Chief Accountant; one year as Secretary, and auditor of a rough rice buying agency for New Orleans rice mills, and one and one-half years as traveling auditor for the Millers Committee, an agency operating under a Marketing Agreement for the Southern Rice Industry. J. J. Mayer has had approximately seven years actual experience in buying, selling and grading rough rice and distributing milled rice, and by-products. Our broad experience, as above outlined, reveals the following facts as existing in the rice milling industry:

There is no established market price on rough rice, and the method of buying the rough rice by the millers is a competitive bidding method. Each miller has his buyer, who makes the competitive bid on the basis outlined to him by the management of the mill. The basis is as follows: Rice millers determine the price to make their bid to a producer for his rough rice based on the prevailing market price for milled rice computing the values to the different grades and by-products obtained from the processing of the rough rice being bid upon. *For example:*

A lot (parcel) of rough rice, estimated to produce (per barrel of 162 pounds) the following articles, grades, classes, etc., when processed, with estimated values as set out for each of the respective grades, classes, etc.:

Fancy Head Rice—100 pounds at 4½c $4.50
Second Head Rice—4 pounds at 3c ..... .12

Screenings Rice—6 pounds at 2½c	.15
Brewers Rice—2 pounds at 2c	.04
Total yield per barrel—112 pounds.	
Total value	$4.81 plus
Approximate revenue from by-products (25c per barrel of 162 pounds)	.25
Total revenue	$5.06

Competitive bidding basis prior to the processing tax law requiring payment of a processing tax in cash:

51 The above $5.06 is the gross value of milled rice articles and by-products resulting from a 162 pound barrel of rough rice. The mill would deduct from this gross figure the conversion charge, this conversion figure including the mills expense for processing the rough rice, and the estimated profit. Assuming that this conversion would be 60c per barrel, the mill would then bid the producer $5.06, less the 60c conversion, or $4.46 per barrel for the rough rice. The affiants solemnly swear that they have used and seen records of various rice mills establishing the basis as outlined above.

Competitive Bidding Basis after the Processing Tax Law requiring Payment of a Processing Tax in Cash: Since the beginning of the 1933 crop movement, which become available for market during the month of July, and on which the processing tax applies, the rice millers use the same basis to determine values; however, in addition to deducting the conversion charge, the rice millers deduct also the 1¢ per pound processing tax on the rough rice, or $1.62 per barrel, and submits his bid to the producer, less this deduction, as follows:

For the value of the same lot of rough rice as above illustrated, estimated to produce milled rice and by-products with gross values of $5.06 per barrel, the rice

miller deducts the following: Conversion 60c and processing tax $1.62, or a total of $2.22 per barrel, and makes bid to the producer of $2.84 per barrel for that particular lot of rough rice.

The affiants further solemnly swear that in their practical experience they have prepared, and have seen prepared profit and loss statements for certain given periods other than the entire season; further that these profit and loss statements are prepared on particular lots of rice, which is essential and necessary in their accounting procedure. Should the Agricultural Adjustment Act be held unconstitutional, the affiants state that the rice processors should enjoy the remedy and benefits given by Section 21 (d) of the said Agricultural Adjustment Act, as amended August 27th, 1935, because the records of buying processing and selling kept by the rice mills are adequate enough to properly allocate the cost of various grades of milled rice and its by-products, resulting from the processing of the rough rice; also to properly allocate in this cost, the processing tax, proportionately to the various grades of each lot of milled rice sold by itself alone or mixed. The greater portion of the milled rice sales are straight mill run lots without blending.

The affiants further solemnly swear that they have kept or have seen rice millers' records which reflect correct cost of production, profits from sales, etc., properly allocated to milled rice of various varieties,
and grades, and by-products, and similarly al-
52 located as to profits in selling prices, and
should the Agricultural Adjustment Act be proven unconstitutional, each rice processor has sufficient records to enable him to recover in accordance with Section 21 (d) of the Agricultural Adjustment Act, as amended.

Summed up, the introduction of the rice processing tax has in no wise altered the customary manner or procedure followed by the rice milling industry in conducting their business.

(Sgd.) L. J. BARTEL,
(Sgd.) R. F. GOULD,
(Sgd.) JAMES J. MAYER.

Subscribed and sworn to before me this 28th day of October, 1935.

(Sgd.) HOMER R. ROBINSON,
Deputy Collector.

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53 DECREE.

Filed October 28, 1935.

United States District Court, Eastern District of Louisiana, New Orleans Division.

Rickert Rice Mills, Inc.,
versus No. 321 (Equity).
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue for the District of Louisiana.

This cause came on today to be heard upon the application of the plaintiff for a preliminary injunction, as well as upon the motion filed on behalf of the defendant to dismiss the bill of complaint, and was argued by counsel for the respective parties;

Whereupon, and upon consideration thereof, and for the reasons orally assigned;

It is Ordered, Adjudged and Decreed that the application for the Preliminary Injunction be and the same is hereby denied;

It is Further Ordered, Adjudged and Decreed that the plaintiff's petition and bill of complaint in all respects be dismissed.

(Signed) JOHN McDUFFIE, Judge.

New Orleans, Louisiana, October 28, 1935.

MOTION OF PLAINTIFF FOR INJUNCTION PENDING APPEAL & ORDER.

54 Filed Oct. 29, 1935.

In the United States District Court for the Eastern District of Louisiana.

Rickert Rice Milling Company, Inc.,
versus No. 321 (In Equity).
Rufus W. Fontenot, Individually, etc.

Comes now the plaintiff in the above entitled and numbered cause and moves the Court to grant plaintiff an injunction pending appeal for the reason that, unless such injunction pending appeal is granted plaintiff, plaintiff will be compelled to pay the taxes referred to in plaintiff's petition before plaintiff's appeal can be determined by the Circuit Court of Appeals, thus causing it great and irreparable injuries. Plaintiff offers to furnish good and sufficient bond by a solvent surety company in an amount to be fixed by the Court, if the Court should grant its prayer for injunction pending appeal.

BAKER, BOTTS, ANDREWS & WHARTON,
By JOHN P. BULLINGTON.

Motion denied.

(Signed) JOHN McDUFFIE, Judge.

MOTION OF PLAINTIFF FOR APPEAL AND ORDER ALLOWING SAME.

55 Filed October 29, 1935.

United States District Court for the Eastern District of Louisiana.

Rickert Rice Milling Company, Inc.,
versus No. 321 (In Equity).
Rufus W. Fontenot, Individually, etc.

On motion of plaintiff in the above cause, and on suggesting to the Court that plaintiff is aggrieved by the decree entered by the Court herein on the 29th day of October, 1935, granting defendant's motion to dismiss, and that plaintiff desires to appeal therefrom with a supersedeas and a stay of proceedings in the District Court, pending appeal to the United States Circuit Court of Appeals for the Fifth Circuit, and

On further suggesting to the Court that said decree is contrary to the law and the evidence for the reasons set forth in the assignment of errors filed in plaintiff's behalf herein; and

On further suggesting to the Court that this motion being filed in open Court on the entry of such decree and in the presence of counsel for defendant, no citation of appeal is necessary or need issue herein;

It is Ordered by the Court that the appeal of plaintiff from the decree entered herein to the United States Circuit Court of Appeals for the Fifth Circuit be and the same is hereby allowed with supersedeas, on appellant's furnishing bond with good and solvent surety, conditioned as required by law and to be approved by the Court in the sum of $250.00 said bond to act as a supersedeas, as well as a bond for costs and damages;

It is Further Ordered by the Court that the appeal of plaintiff from the decree entered herein be made returnable to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, on or before November 27th, 1935, and that a certified copy of the record herein be transmitted to said Court of Appeals by the Clerk of this Court, and that no citation of appeal is necessary or need issue herein.

(Signed) JOHN McDUFFIE, Judge.

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56 ASSIGNMENT OF ERRORS.

Filed Oct. 29, 1935.

United States District Court for the Eastern District of Louisiana.

Rickert Rice Milling Company, Inc.,
versus No. 321 Equity.
Rufus W. Fontenot, Individually, etc.

Comes now plaintiff and says that, in the record in proceedings of the said Court in the above entitled cause and in the decree made and entered therein on the 28th day of October, 1935, there is manifest error and for error the said plaintiff assigns the following:

(1) The Court erred in sustaining defendant's motion to dismiss plaintiff's Bill of Complaint, because such action was contrary to the law and the evidence.

(2) The Court erred in over-ruling and not sustaining plaintiff's motion for a preliminary injunction because said ruling was contrary to the law and the evidence.

Wherefore, plaintiff prays that said Decree be, in all things, reversed, with instructions to the said District Court to grant plaintiff a preliminary injunction.

BAKER, BOTTS, ANDREWS & WHARTON,
By JOHN P. BULLINGTON.

57 APPEAL BOND.

Filed October 29, 1935.

United States District Court, Eastern District of Louisiana, New Orleans Division.

Know all Men by these Presents, that we, Rickert Rice Milling Company, Inc., as principal and Hartford Accident & Indemnity Co., as surety, are held and firmly bound unto Rufus W. Fontenot, in the full sum of $250.00, to be paid to the said Rufus W. Fontenot, his attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents, sealed with our seals and dated this 29th day of October, 1935.

Whereas, lately, in the District Court of the United States for the Eastern District of Louisiana, judgment was rendered against Rickert Rice Milling Company, Inc., and in favor of Rufus W. Fontenot, denying plaintiff's application for a Preliminary Injunction and dismissing plaintiff's Bill of Complaint, and the said Rickert Rice Milling Company, Inc., having obtained an appeal to reverse said judgment, citing and admonishing the said Rufus W. Fontenot to be and appear at a session of the United States Circuit Court of Appeals for the Fifth Circuit to be holden at the City of New Orleans, La., in said Circuit Court on the 27th day of November, 1935.

Now the condition of the above obligation is such that if the said Rickert Rice Milling Company, Inc., shall prosecute its appeal to effect and answer all damages and costs, if it fail to make its plea good,

then the above obligation to be void, else to remain in full force and effect.

RICKERT RICE MILLING COMPANY, INC.,
(Signed) BAKER, BOTTS, ANDREWS & WHARTON,
By JOHN P. BULLINGTON,
Principal.
HARTFORD ACCIDENT & INDEMNITY CO.,
Surety.
By VALENTINE DELL,
(Seal) Attorney-in-Fact.

Approved, October 29, 1935.
(Signed) RUFUS E. FOSTER, Judge.

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58 PRAECIPE.

Filed October 31, 1935.

In the District Court of the United States for the Eastern District of Louisiana, New Orleans Division.

Rickert Rice Mills, Inc., Plaintiff,
vs. No. 321 (In Equity).
Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Defendant.

To the Honorable H. J. Carter, Clerk of the United States District Court for the Eastern District of Louisiana:

You will please include in the record upon appeal in the above entitled cause the following documents and procedures:

1. Plaintiff's original bill of complaint.

2. Defendant's motion to dismiss and answer.

3. Order of Court consolidating causes for trial and providing for evidence in cause No. 324 in Equity, Baton Rouge Rice Mill, Inc., vs. Rufus W. Fontenot, etc., being considered as evidence in this cause.

4. Affidavit of W. M. Reid.

5. Affidavit of Homer L. Bruce.

6. Joint affidavit of L. J. Bartel, R. F. Gould and J. J. Mayer.

7. Decree of District Court.

8. Plaintiff's motion for injunction pending appeal and order denying same.

9. Motion and order for appeal.

10. Plaintiff's assignment of error.

11. Appeal bond.

12. This Praecipe.

13. Clerk's certificate.

HOMER L. BRUCE,
JOHN P. BULLINGTON,
BAKER, BOTTS, ANDREWS & WHARTON,
By JOHN P. BULLINGTON,
Attorneys for Plaintiff and Appellant.

Approved:
(Sgd.) ROBERT WEINSTEIN,
Asst. U. S. Attorney, Counsel for defendant.

59 Clerk's Office:

I, HENRY J. CARTER, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 58 pages form a full, true and complete transcript of the record, assignment of errors, and all proceedings in the cause entitled "Rickert Rice Mills, Inc., Plaintiff, vs. Rufus W. Fontenot, Individually and as acting Collector of Internal Revenue for the District of Louisiana," No. 321 In Equity of the Docket of this Court, as made up in accordance with the praecipe for transcript copied therein.

Witness my Hand and the seal of the said Court at the City of New Orleans, Louisiana, this 31st day of October, A. D. 1935.

(Seal) H. J. CARTER, Clerk.

[fol. 87] IN UNITED STATES CIRCUOIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AT NEW ORLEANS, LOUISIANA

No. 7937

RICKERT RICE MILLING COMPANY, INC., Appellant

v.

RUFUS W. FONTENOT, Individually and as Acting United State Collector of Internal Revenue for the District of Louisiana, Appellee

MOTION OF APPELLANT FOR A PRELIMINARY INJUNCTION PENDING APPEAL—Filed November 4, 1935

Comes now the Rickert Rice Milling Company, Inc., appellant in the above numbered and entitled cause, and after due notice given to the appellee above named, respectfully states to the Court that the said appellant on the 25th day of October, 1935, brought a bill in equity in the United States District Court for the Eastern District of Louisiana, New Orleans Division, entitled Rickert Rice Milling Company, Inc., plaintiff, v. Rufus W. Fontenot, individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, defendant, and numbered 321 in equity, in the New Orleans Division of said United States District Court. In its bill of complaint in said cause appellant prayed for a temporary restraining order to be [fol. 88] issued immediately, and for a preliminary injunction after notice to the appellee, and for a permanent injunction on the final hearing of said cause, enjoining the appellee from assessing or collecting or attempting to assess or collect from the appellant in any manner whatsoever, whether by lien or jeopardy or distraint proceedings, in court or otherwise, any processing taxes levied under and pursuant to the Act of the Congress of the United States known as the Agricultural Adjustment Act and amendments thereto, or purported to be levied by said Act, upon the appellant for the processing of rice during the month of September, 1935, and for subsequent months, and any interest or penalty on account of appellant's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of appellant. That said application

for a preliminary injunction was set down for hearing before the Judge of said District Court at New Orleans on Monday, October 28, 1935. The notice thereof was duly waived by the appellee. Prior to said hearing the said appellee filed his motion to dismiss and answer to said bill of complaint, copies of which motion and also of appellant's bill of complaint are contained in the record in this cause filed in this Court.

After a hearing had on appellant's motion for a preliminary injunction and on the said motion to dismiss, the Honorable John McDuffie, acting judge of said District Court on October 28, 1935, refused appellant's motion for a preliminary injunction, granted the motion of the appellee to dismiss the said bill of complaint and dismissed the said bill of complaint to which appellant herein duly excepted. [fol. 89] Thereafter, on the 29th day of October, 1935, the appellant herein in open court and in the presence of counsel for appellee filed its petition for an appeal, which was duly allowed by the said judge of the said United States District Court who tried said cause, and filed at the same time its assignments of errors, and also a cost bond was duly filed and approved by the said judge of said District Court. At the time appellant presented its said petition for appeal, it also petitioned said judge of the District Court to grant it an injunction enjoining the appellee in the manner set out in its request for a preliminary injunction in its bill of complaint, pending the appeal of appellant to this Honorable Court, but the said judge of said District Court on October 29, 1935, refused appellant's said petition and refused to grant appellant said injunction pending said appeal.

Appellant has therefore perfected its appeal to the Circuit Court of Appeals for the Fifth Circuit, making said cause returnable at New Orleans, Louisiana, as provided by law. Appellant has duly caused to be prepared a transcript of the record in said cause and has filed the same, in accordance with law, and within the time allowed by law, in the Clerk's office in the Circuit Court of Appeals at New Orleans, Louisiana.

In said bill of complaint appellant alleged that the amount of processing taxes on account of the rice processed by the appellant during the month of September, 1935, was $57,275.42, and that under said Agricultural Ad-

justment Act appellant was required to pay said amount to appellee on or before October 30, 1935, and that appellee was charged with the duty of collecting said tax, and if [fol. 90] said tax were not paid on or before October 30, 1935, appellee would assess said tax against the appellant and serve upon appellant notice and demand for the payment thereof and would allow appellant ten days from receipt from such notice within which to pay the same; that in the event said tax should not be paid within said time, appellee would assess against appellant a penalty equal to 5% of the amount of the tax and interest on the tax at the rate of 1% per month from the due date of the tax until paid; that if the appellant failed to pay the tax within said ten days, appellee would proceed to collect the tax, penalty and interest by filing a notice of lien on all of appellant's property and by distraining upon and selling such of appellant's property as might be necessary to realize the amount of said tax, penalties and interest; and that additional processing taxes for months subsequent to September, 1935, will accrue and be assessed against and collected from the appellant in the same manner as the tax for the month of September.

Appellant alleged that the said processing tax was illegal and unconstitutional, and violated various provisions of the Constitution of the United States in many particulars, more fully set forth in appellant's bill of complaint. The appellant also alleged that under an amendment to said Agricultural Adjustment Act approved on August 24, 1935, a Section 21 (d) was added to said Act, which section provides in substance that appellant should be allowed no recovery of any of said taxes paid, if the same should be illegal or unauthorized, unless appellant established to the satisfaction of the Commissioner of Internal Revenue, and [fol. 91] the Commissioner should so find, that neither appellant nor any person directly or indirectly under appellant's control or having control over appellant, has, directly or indirectly, included such amount in the price of the rice with respect to which it was imposed or of any article processed from the rice with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing rice, and that the price paid by the appellant or such person for said rice was not reduced by any part of such

amount. Appellant in said bill of complaint, alleged, as more fully set out in said bill of complaint, that under said Section 21 (d) it had no adequate remedy at law by which it could recover any part of said taxes if same were unconstitutional and illegal, and that it was impossible, owing to the peculiar conditions existing in the rice milling industry and in the purchase, milling and sale of rice, for appellant to discharge the burden placed upon it by said Section 21 (d), all as more fully set out in appellant's bill of complaint.

Appellant further alleged that in said amendment of August 24, 1935, a new section known as Section 21 (a) was added to said Agricultural Adjustment Act, which in substance provided that no suit to enjoin the collection of said processing taxes should be maintained in any court. Appellant further alleged that said section was not intended to apply, and did not apply, to the injunction prayed for by appellant, inasmuch as appellant had no adequate remedy at law. Appellant further alleged that if said section should be interpreted as prohibiting the injunction [fol. 92] prayed for by appellant, then the said section, together with the other provisions of said Act, was invalid and in violation of the Fifth Amendment to the Constitution, that no person shall be deprived of his property without due process of law, in that said illegal and unconstiltutional taxes would be collected from appellant and appellant would have no remedy by which he could recover taxes and would have no remedy to prevent the collection of said unlawful taxes and would be forever deprived of the right to test the constitutionality of said taxes.

Appellant further alleged that said Section 21 (d) denied the appellant a complete and adequate remedy at law for the various other reasons set forth in said bill of complaint.

At the hearing before the District Judge appellant introduced in evidence the affidavit of W. M. Reid, Executive Secretary of The Rice Millers Association, a man of twenty-six years experience in the rice business, in which affidavit he set out fully and in detail the methods of conducting the rice business and the manner in which the rough rice market and the clean rice market is made, showing that it would be utterly impossible for any rice miller to accurately determine whether he had made a profit or a loss on any given transaction, much less prove whether he had passed the

tax, or any part thereof, on. Appellant also introduced in evidence the affidavit of Homer L. Bruce, a practicing attorney at the bar at Houston, Texas, setting out in detail the proceedings under a complaint brought by the Secretary of Agriculture to revoke the license of a rice mill under the Act in effect prior to the present Act. The Secretary of Agriculture sought to revoke the license of this mill for [fol. 93] failure to sell clean rice and rice products processed from rough rice at a price approximately 79c higher than the price paid for the rough rice. The affidavit showed that although the Government was able to prove the cost of the rough rice and to trace the particular rough rice into various "mixes" of clean rice and the price procured for these "mixes" of clean rice it was never able to prove that the price procured for the clean rice processed from the particular lot of rough rice was not 79c more than the price paid for the rough rice because of the fact that clean rice is customarily sold in "mixes" of various lots of rice and there was no way to allocate the price procured for the mixed rice sold to the various lots of rough rice which went into the mix.

In the meantime, appellant alleges that for the foregoing reasons and those set forth in its said bill of complaint in said cause, and because the judge of said court in his said order dismissed said bill of complaint and refused to grant appellant the injunction prayed for pending the appeal in this case, the appellee herein will, to the irreparable damage and loss of the appellant herein, proceed to collect the said taxes for September, 1935, which are now due and unpaid, from appellant, and said taxes for subsequent months, unless restrained by a preliminary injunction granted by this court. The appellant alleges that not only has it no complete remedy at law, but in fact no remedy at law at all, for the reasons hereinabove set forth and set forth more in detail in said bill of complaint, that it is faced with the alternative of paying the tax with the certainty that no remedy at law exists for its recovery in case it be held that it was unconsitutionally assessed, or of refusing [fol. 94] to pay and running the risk of becoming liable for the heavy civil and criminal penalties provided in the Act, and that the said judge of said District Court should not have dismissed said bill of complaint, but should have overruled the same, and upon the hearing should have

granted the preliminary injunction as prayed for in said bill of complaint.

Appellant would further show that there is now pending in the Supreme Court of the United States a case involving the constitutionality of the said Agricultural Adjustment Act, being the same case in which the Circuit Court of Appeals for the First Circuit declared the Act to be unconstitutional, and that the Supreme Court, according to press dispatches, has set said cause for oral argument on Monday, December 9, 1935; that a decision by the Supreme Court of the United States upon the validity of the said Act may be expected within a reasonable time thereafter; that the first benefit payment to farmers provided for in said Act has been made, and that under the standard form of contract between the Secretary of Agriculture and rice farmers no further payment is due until such time after December 1, 1935, as the Secretary shall determine and declare what further amount of benefit payments shall be made and when they shall be made; that the taxes to be collected under said Act are for the purpose of making these benefit payments and that since the Secretary of Agriculture need make no further benefit payments until such time after December 1, 1935, as may be fixed by him, the delay of the Government in collecting these taxes which might be occasioned by the granting of the injunction [fol. 95] prayed for herein will not occasion any injury to the Government nor will it unduly interfere with the achievement of the program set out in said Act if the Act be held constitutional. On the other hand, as hereinabove alleged, great and irreparable damage will be done to plaintiff in the event the law is held unconstitutional unless the injunction hereinafter prayed for is granted.

Appellant further shows that unless an injunction pending appeal be granted so as to preserve the status quo, the subject-matter of the suit will be lost and the jurisdiction of this Honorable Court defeated. Such injunction is necessary to preserve the jurisdiction of this Honorable Court, and in order that appellant may enjoy the just fruits of a favorable decision on this appeal.

The appellant states that it is ready and willing to give any reasonable bond or other security that may be required by any order of this Court, including the deposit from month to month of the amount of tax due, in a depository to be designated by the court, and therefore prays that this

Court make an order granting appellant a preliminary injunction enjoining and restraining the appellee from assessing or collecting or attempting to assess or collect from appellant in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in court of otherwise, the said processing taxes for the month of September and subsequent months and any other processing taxes under and pursuant to said Agricultural Adjustment Act upon rice processed by appellant, and any interest or penalty on account of appellant's failure to pay said processing taxes, and from imposing or giving notice of intention to impose [fol. 96] any lien for said taxes upon the property, real or personal, of the appellant, pending the hearing of appellant's appeal in this case and upon such conditions and terms as to this Court may seem just.

John P. Bullington. Homer L. Bruce. Baker, Botts, Andrews & Wharton, of Counsel.

[fol. 97] *Duly sworn to by John P. Bullington. Jurat omitted in printing.*

[fol. 98] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7937

[Title omitted]

Before Foster and Sibley, Circuit Judges, and Strum, District Judge

ORDER DENYING MOTION OF APPELLANT FOR A PRELIMINARY INJUNCTION PENDING APPEAL—Filed November 5, 1935

By the COURT:

On consideration of the application for an injunction to stay collection of taxes levied under the provisions of the Agricultural Adjustment Act, as amended by the Act of August 24, 1935, the Court is of the opinion that the taxpayer has a remedy at law to recover back any taxes il- [fol. 99] legally exacted and, further, that the provisions of the Act as amended deprive the Court of jurisdiction to grant injunctive relief.

It is ordered that the application be denied.

[fol. 100] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 101] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 25, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted, and the case is assigned for argument on Monday, December 16, next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 40,131. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 577. Rickert Rice Mills, Inc., Petitioner, vs. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana. Petition for a writ of certiorari and exhibit thereto. Filed November 11, 1935. Term No. 577, O. T., 1935.

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 578

A. B. DORE, PETITIONER,

vs.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 11, 1935.

CERTIORARI GRANTED NOVEMBER 25, 1935.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 578

A. B. DORE, PETITIONER,

vs.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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UNITED STATES OF AMERICA.

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

No. 322 (In Equity).

A. B. DORE, Doing Business Under the Name of THE DORE RICE MILL,

versus

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA.

Appearances:

Messrs. John P. Bullington, Homer L. Bruce and Baker, Botts, Andrews & Wharton, Attorneys for A. B. Dore, doing business under the name of The Dore Rice Mill, Plaintiff-Appellant.

Rene A. Viosca, Esq., United States Attorney and Robert Weinstein, Asst. U. S. Attorney, appearing on behalf of Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Defendant-Appellee.

APPEAL from the District Court of the United States for the Eastern District of Louisiana, to the United States Circuit Court of Appeals for the Fifth Circuit, returnable within thirty (30) days from the 29th day of October, 1935, at the City of New Orleans, Louisiana.

TRANSCRIPT OF RECORD.

BILL OF COMPLAINT & EXHIBITS ANNEXED.

Filed Oct. 25, 1935.

In the District Court of the United States, Eastern District of Louisiana, New Orleans Division.

A. B. Dore, doing business under the name of The Dore Rice Mill.

vs. No. 322 In Equity.

Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana.

To the Honorable Wayne G. Borah, Judge of the United States District Court, for the Eastern District of Louisiana:

Comes now A. B. Dore, doing business under the name of The Dore Rice Mill, hereinafter referred to as plaintiff and in the neuter singular, complaining of Rufus W. Fontenot, individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, hereinafter called defendant, and for cause of action shows to the Court as follows:

1.

Plaintiff is a resident of and domiciled in Crowley, Acadia Parish, Louisiana. The defendant is a citizen of the State of Louisiana residing at New Orleans, Louisiana, and is the duly appointed, commissioned, qualified and Acting United States Collector of Internal Revenue for the State of Louisiana.

2.

The grounds of jurisdiction of this Court in this case are that this is a suit arising under the Constitution of the United States and the laws of the United States, in of the United States and the laws of the United States, in which the matters in controversy exceed Three Thousand Dollars ($3,000.00), and this suit is also one in which an injunction is sought against an official of the United States to prevent him from unlawfully collecting processing taxes levied by the United States pursuant to certain acts of Congress, more fully set out hereinafter, and to have declared invalid and unconstitutional said acts of Congress in so far as they attempt to provide for the levy, assessment and collection of said processing tax.

3.

Plaintiff is engaged in the business of milling rice and owns and operates a rice mill at Crowley, Louisiana. The milling of said rice, which constitutes processing of said rice under the terms of the Agricultural Adjustment Act, hereinafter referred to, is done wholly within said State and is a matter of intrastate commerce exclusively, being performed in its entirety within the limits of said State wherein plaintiff's rice mill is established and operated.

4.

There was adopted by the 73rd Congress and approved on May 12, 1933, an Act, P. L. No. 10, popularly known as the "Agricultural Adjustment Act," but officially entitled:

"An Act to relieve the existing national Economic emergency by increasing agricultural purchasing power,

to raise revenue for extraordinary expenses incurred by reason of the emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint stock land banks, and for other purposes."

and said Act with its amendments, for convenience hereinafter, will be referred to by its popular title, namely, the Agricultural Adjustment Act.

Said Agricultural Adjustment Act has been amended several times and particularly by an amendment approved August 24, 1935, which amendment is hereinafter referred to as the Amendment of August 24, 1935.

5.

The policy to be effectuated by the enactment of said Act, prior to the Amendment of August 24, 1935, was declared by Congress in Section 2 to be as follows:

"It is hereby declared to be the policy of Congress—

(1) To establish and maintain such balance between the production and consumption of argicultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. The base period in the case of all agricultural commodities except tobacco shall be the prewar period, August 1909-July 1914. In the case of tobacco, the base period shall be the postwar period, August 1919-July 1929.

(2) To approach such equality of purchasing power by gradual correction of the present inequalities there-

in at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets.

(3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the prewar period, August 1909-July 1914."

By said Amendment of August 24, 1935, Subsection (1) of said Section 2 was amended by inserting at the beginning thereof the words

"Through the exercise of the powers conferred upon the Secretary of Agriculture under this title."

and Subsections (2) and (3) were stricken out and the following inserted in lieu thereof:

"(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section."

Plaintiff alleges that under no provision of the Constitution of the United States is the Congress of the United States authorized to provide for said processing taxes for the purpose of accomplishing any of

said policies above set forth, and the levy, assessment and collection of said taxes have been provided for in said Act, not for the purpose of raising revenue, but for the purpose of accomplishing the things set out in said declaration of policy of Congress and for said reasons the levy, assessment and collection of said taxes are wholly illegal, unlawful and unwarranted under the Constitution of the United States.

6.

Section 8 of said Agricultural Adjustment Act provides in substance that, in order to effectuate the declared policy of the Act, the Secretary of Agriculture shall have power to provide for a reduction and adjustment in the acreage and production for market, or both, of any basic agricultural commodity, including rice, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith, in such amounts as the Secretary finds best calculated to effectuate the declared policy of the Act, to be paid out of the moneys hereinafter referred to.

Section 9(a) of said Agricultural Adjustment Act levies the processing taxes thereinafter provided. It then provides that when the Secretary of Agriculture determines that any one or more payments (including said rental or benefit payments) authorized to be made under Section 8 of said Act or to be made with respect to any basic agricultural commodity, he shall proclaim such determination and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation. Said Act, however, provided that with respect to rice the processing tax for the period from April 1, 1935, to July 31, 1936, should be at the rate of 1c

per pound of rough rice. Under a similar provision of said Act before being amended by the Amendment of August 24, 1935, the Secretary was directed to proclaim, and did proclaim, before April 1, 1935, that rental or benefit payments would be made with respect to rice and the processing tax of 1c per pound of rough rice would be in effect on and after April 1, 1935.

Section 9(b) of said Agricultural Adjustment Act provides that the processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, as those terms are defined in the Act, plus such percentage of such difference, not to exceed 20 per centum, as the Secretary may determine will result in the collection in any marketing year of an amount of tax equal to (A) the amount of credits or refunds which he estimates will be allowed during such period with respect to the commodity and (B) the amount of the tax which he estimates would have been collected during such period upon all processings of such commodity exempt from tax because such processings are done by or for a State or a political subdivision or an institution thereof, except that the processing tax on rice for the period above mentioned should be at the rate of 1c per pound of rough rice.

Section 12(a) of said Act, prior to the Amendment of August 24, 1935, appropriated the sum of $100,000,000.00 to be available to the Secretary of Agriculture for administrative expenses under Title 1 of said Act and for rental and benefit payments made with respect to reduction in acreage or reduction in production for market under Part 2 of said Title 1. Section 12(a) of said Act, after said amendment, appropriated the said sum of $100,000,000.00 to the Secretary for administrative expenses under Title 1

and for payments authorized to be made under Section 8, including said rental and benefit payments made with respect to adjustment and reduction in acreage or production for market of basic agricultural commodities, including rice.

Section 12(b) of said Act, prior to said Amendment of August 24, 1935, provided that, in addition to said $100,000,000.00, the proceeds derived from all processing taxes imposed under said Title 1 were appropriated to be available to the Secretary of Agriculture for expansion of markets and removal of surplus agricultural products and administrative expenses, rental and benefit payments, and refunds on taxes. Section 12 (b) of said Act as amended by said Amendment of August 24, 1935, provided that, in addition to said $100,000,000.00 a further sum was appropriated to be available to the Secretary of Agriculture for payments authorized to be made under said Section 8, including said rental and benefit payments, said sum so appropriated to be equal to the proceeds derived from all processing taxes imposed under said Act.

7.

Acting pursuant to the purported authority given to him under said Agricultural Adjustment Act, the Secretary of Agriculture under date of April 18, 1935, through R. G. Tugwell, the then acting Secretary of Agriculture, promulgated certain rulings relating to the 1935 Southern Rice Production Adjustment Program, a copy of which rulings is attached hereto as Exhibit A and made a part hereof as if fully copied herein at this point. Under said rulings the Secretary of Agriculture allotted acreage to be planted in rice and barrels of rice to be produced, (a barrel being defined as being one hundred sixty-two pounds of rough rice)

in the States of Arkansas, Louisiana and Texas as follows:

	Acres.	Barrels.
Arkansas	135,000	1,834,722
Louisiana	364,500	3,898,333
Texas	142,500	2,010,833

Said rulings provided for a State Committee appointed by the Secretary of Agriculture for each State and for various forms and applications to be filled out by those desiring to produce rice and to be filed with the said State Committee. Said rulings provided that the base period for Texas should be the years 1931 to 1933, inclusive, and for Arkansas and Louisiana should be the years 1929 to 1933, inclusive. Said rulings further provided that the said State Committee should make an allotment to a producer applying to the Secretary of Agriculture through said State Committee for permission to grow rice during the year 1935, by taking the average acreage planted by such producer during the base period applicable to him and by reducing this result by 20% in Arkansas and in Louisiana and by 22% in Texas; and should give an allotment or permission to said producer to plant said 80% (in the case of Arkansas and Louisiana) or 78% (in the case of Texas) of the average acreage planted by him during said base period. Said rulings further provided for said State Committee to allot to each such producer a quota of barrels of rice that he might produce during the year 1935 by allotting to him 80% (if in Arkansas or Louisiana) or 78% (if in Texas) of the average number of barrels of rice raised by him during said base period.

If a producer had produced rice during any of the years constituting his base period, he was eligible to obtain an allotment and a quota from said State Committee, and if he should obtain such allotment and

quota, he was then eligible to execute a contract with the Secretary of Agriculture in the form shown by Exhibit B attached hereto and made a part hereof for all purposes as if copied in full at this point. If said producer executed said contract and it was accepted by the Secretary, he was then eligible for the benefit payments to be made by the Secretary as provided for in said agreement. However, if a producer had not produced rice during any of the years constituting his base period, he was not eligible to execute said contract with the Secretary and was not eligible for the benefit payments provided for therein. Likewise, if a producer did not execute such contract, or if he executed such contract and it was not accepted by the Secretary, he was not eligible for the benefit payments as provided for therein.

Plaintiff alleges that said processing taxes were not levied under the taxing power of the United States and for the purpose of raising revenue, but were levied for the purpose of raising money with which the Secretary of Agriculture could make rental or benefit payments to producers of agricultural products, including rice, and for the purpose of controlling, regulating, and reducing the amount of acreage that would be planted to rice and the amount of rice that would be grown, and to accomplish the purposes set out in Section 2 of said Act, and that the Congress of the United States had no authority under the Constitution of the United States to levy said processing taxes for said purpose and for said objects.

8.

Section 8 further provides that, in order to effectuate the declared policy of the Act, the Secretary is empowered to provide for a reduction in acreage or a reduction in production of any

basic agricultural commodity through agreements with producers, and to provide for rental or benefit payments in connection therewith in such amounts as the Secretary deems fair and reasonable, but there is no standard or measure established or provided in said Act by which the said Secretary shall be guided in providing for said reduction in acreage or production or in the amount of the rental or benefit payments, and said provisions are wholly invalid and violative of Article 1 of the Constitution of the United States which vests all of the legislative power in the Congress of the United States and is an invalid and unconstitutional delegation of legislative power by Congress to the Secretary of Agriculture.

Plaintiff further alleges that the Secretary has made no findings whatsoever, and if he has made any such findings, they are wholly insufficient to support his action in providing said method of reduction of acreage and production of rice as above set forth, and his said regulations and provisions concerning said reduction of acreage and reduction of production and amounts of benefit payments are wholly arbitrary and unsupported by any findings, or at least any sufficient findings, by the Secretary of Agriculture and are not authorized by said Act or the Constitution of the United States.

9.

Section 9(b) of said Act provides that if the Secretary of Agriculture has reason to believe that the processing tax levied on any commodity will cause such reduction in the quantity of such production domestically consumed as to result in the accumulation of surplus stock thereof or in the depreciation of the farm price of the commodity, then he shall cause an investigation to be made on due notice and opportunity for hearing to interested parties, and if thereupon the

Secretary finds that such result will occur, then the processing tax on such commodity shall be at such rate as will prevent such accumulation of surplus stock and depreciation of said farm price. Said provision applies to the processing tax levied upon rice. Said provision sets no proper standard by which the Secretary shall be guided in determining the rate of the processing tax on rice or how long said tax of one cent (1c) per pound shall remain on rice, and the continuation of said processing tax being dependent upon said action by the Secretary, said provision is an unconstitutional delegation of legislative power to the Secretary of Agriculture in violation of Article 1 of said Constitution vesting the legislative power in the Congress, and for said reasons the said Act in levying said processing tax is void and illegal.

10.

In addition to the foregoing reasons, the said Agricultural Adjustment Act and its provisions for the levying, assessment and collection of said processing taxes upon rice processed by this plaintiff are void, illegal and in violation of the Constitution of the United States for the following reasons:

1. They are an attempt and effort by the United States to regulate, control and reduce the production of certain agricultural commodities specified in said Act, including rice. The so-called processing taxes imposed by said Act are an integral part of the scheme, attempt and effort of regulating, controlling and reducing the production of such commodities, which attempt, effort and scheme is not within the scope of any of the powers vested in the Congress by the Constitution, and if said power exists as a governmental function, it is therefore within the powers reserved to the States as expressly provided by the Tenth Amendment to the Constitution.

2. The so-called processing taxes were not imposed under or in conformity with the power vested in the Congress by Section 8 of Article 1 of the Constitution to levy and collect taxes, duties, imposts and excises, in that they are not imposed to pay the debts or to provide for the common defense or the general welfare of the United States, but were imposed for the benefit of a particular class of individuals, namely, the producers of the various agricultural commodities specified in said Act who conform to the conditions laid down in said Act.

3. The said Act and provisions for the levy, assessment and collection of said processing taxes violates the provisions of the Fifth Amendment to the Constitution since the so-called processing taxes constitute the deprivation of the property of one class of citizens, including the plaintiff, namely, processors of said specified commodities, including rice, without due process of law, in that such processing taxes constitute the taking of the property of this class of citizens, including the plaintiff, not for a public purpose but for a private purpose, to-wit, the payment of gratuities or bounties or benefit payments to another class of persons, namely, the producers of the designated agricultural commodities, including rice, and particularly since this taking is without just compensation to the plaintiff and said processors.

4. Said so-called processing taxes levied by the Act are taxes in name only and not in fact. They constitute merely an exactment and imposition by the Government for the purpose, not of raising revenue for the support of the government, but of raising the price for farm products and adjusting farm income and for carrying out the policy of said Act as hereinabove set forth and for the purpose of enabling the government to carry out and effectuate the said attempt, effort and scheme of the United States as hereinabove set out.

5. Under the terms of Article 1, Section 1, of the Constitution of the United States, the legislative powers granted to the Federal Government are vested in the Congress; whereas, the said Act purports to vest powers in the Secretary of Agriculture, who alone is to determine, at his own discretion and without any definite standard fixed by Congress, the method of bringing about a reduction or adjustment in acreage and production of agricultural commodities, including rice; to provide for rental or benefit payments in connection therewith in such amounts as the Secretary may deem fair and reasonable; to determine how long the said tax of 1c per pound upon the processing of rice shall remain in effect, and if the Secretary changes said rate, what rate shall be fixed. In said respects the said Act involves an invalid delegation to the Secretary of Agriculture by Congress of powers vested exclusively in it by the Constitution and because of said things the said Act delegates said legislative powers to the Secretary of Agriculture and said powers are conferred exclusively on Congress by said Article 1, Section 1; Article 1, Section 8, clause 18; Article 11, Section 1; Article 1, Section 7, clause 1; and Article 1, Section 9, clause 7 of the Constitution.

6. The said taxes if construed as direct, violate Article 1, Section 9, clause 4, and Article 1, Section 2, clause 3 of the Constitution, because not apportioned according to population.

7. The said taxes are not excise taxes, and are not uniform throughout the United States as required by Article 1, Section 8, clause 1.

8. The said alleged taxes cannot be levied under Article 1, Section 8, clause 3, regulating commerce, because neither the production nor processing of commodities, including the processing of rice done by plaintiff, is in interstate commerce and cannot be regulated

by Congress and in so far as this plaintiff is concerned, its processing of said rice is not interstate commerce and cannot be regulated by Congress.

11.

Under the terms of said Act and orders of the Secretary of Agriculture and the Secretary of the Treasury, the plaintiff is required to file returns with the defendant on or before the 30th day of October, 1935, showing the amount of rice processed by the plaintiff during the month of September, 1935, and the amount of said so-called processing tax on account of said rice processed by the plaintiff during said month, and plaintiff is required to pay said amount to the defendant on or before October 30, 1935. The amount of said processing taxes on account of the rice processed by the plaintiff during said month of September is $18,545.65. The defendant as said Collector of Internal Revenue is charged with the duty of collecting said tax, and if the plaintiff does not make said payment on or before October 30, 1935, the said defendant will assess said tax against the plaintiff and will serve upon the plaintiff notice and demand for the payment of said tax, and the plaintiff will be allowed ten days from the receipt of such notice and demand within which to pay said tax. In the event of failure to pay said tax within said time, the defendant will assess against the plaintiff a penalty equal to 5 per centum of the amount of the tax and interest on the tax at the rate of 1 per centum from the due date of the tax until it is paid; if plaintiff fails to pay said tax within the ten days after receipt of said notice and demand, the defendant will proceed to collect the tax, penalty and interest by filing a notice of lien upon all of plaintiff's property, and by distraining upon and selling such of plaintiff's property as may be necessary in order to realize the amount of said tax, penalties and interest. Additional processing taxes for the months sub-

sequent to September, 1935, will accrue and will be assessed against and collected from plaintiff, just as the processing tax for the month of September will be, in the manner described, unless the defendant is restrained and enjoined from assessing and collecting said taxes. Plaintiff has its rice mill at the place stated in paragraph 3 hereof with a large inventory of rough rice and clean rice, bank accounts and cash on hand. Repeated levies upon and distraint of its property from month to month will cause plaintiff irreparable injury and damage, in that such levies and distraints will impair the valuable good-will of its business; will seriously interfere with, if not prevent, the actual operations of its plant and the sales of its product; and will result in a permanent injury to its business and good-will. Furthermore the tax, if once paid by plaintiff, will be irretrievably lost to plaintiff, to its great and irreparable injury.

12.

Plaintiff further shows that by the Amendment of August 24, 1935, Section 30, of said amendment added a new section to the Agricultural Adjustment Act designated as Section 21, a copy of which Section 21 is attached hereto and marked Exhibit C. Plaintiff does not have an adequate and complete remedy at law as to taxes levied and assessed under said Act because of the provisions of Section 21(d) of said Agricultural Adjustment Act. Under Section 21(d) a recovery will not be allowed to the plaintiff for any amount of the tax paid by plaintiff unless it shall be established that the plaintiff has not directly or indirectly included such amount in the price of the rice with respect to which it was imposed or passed on any part of any such amount to the vendee, or included any part of such amount in the charge or fee for processing, and that the price paid by the plaintiff for rough rice was not reduced by any part of such amount.

Plaintiff states that it is an impossibility to prove or attempt to prove what portion, if any, of the processing taxes paid by it has been either deducted from the purchase price of rough rice or added to the selling price of clean rice for the following reasons:

Rice millers buy rough rice at the market price, a price that is established by the competitive bidding of the many rice millers. Rough rice is bought in large quantities and kept on an average of several months before the clean rice made from it is sold, and because of said facts the miller has no way of definitely knowing at the time of the purchase of rough rice whether he will make a profit or loss on the milling and selling of rice. A major factor in determining the market price of rough rice is the market price of clean rice at the time the rough rice is bought but there is no assurance, however, that the market price for clean rice will be the same at the time the miller actually sells the clean rice milled from the rough rice.

The miller who buys rough rice must pay the market price as established under these conditions, and has no power to fix or make the market price himself. Having no power to make prices, he cannot arbitrarily depress the market price of rice in order to pass the processing tax back to the producer.

Likewise, the miller sells the clean rice in competition with many other rice millers, and also in competition with many other food products, such as wheat, potatoes, beans and other food products, that can be substituted for rice. Under such circumstances, if the price of clean rice is pushed too high, consumers will shift to other products with the result that the demand for rice will decline until the price of rice falls to where people will buy it instead of other competitive commodities. Under these circumstances the rice miller cannot fix or make

the price for clean rice, and cannot arbitrarily increase the price of clean rice in order to pass the processing tax on to the purchaser of clean rice.

In addition, rough rice when milled produces many grades of rice and products thereof. It produces extra fancy head rice, fancy head rice, head rice, second head rice, screenings, brewers, polish, bran, and hulls, all of which commodities have varying values, extra fancy rice being the most valuable and the other grades being of less value in the order above set forth. Extra fancy, fancy, head and second head rice are generally sold for human consumption as rice. Screenings are sold to some extent for direct consumption by human beings. Brewers and screenings are a very low priced commodity and are used in general by breweries. Polish, bran and hulls are sold generally for stock feed. Some of such products, particularly brewers, polish, bran and hulls are sold practically always for a less price per pound than is paid for the rough rice per pound. There is no definite proportion by which the price paid for rough rice can be allocated in any way to these different grades of rice, so that it is impossible to tell with any degree of accuracy how much the rice and rice products that have been produced from any particular lot of rough rice have cost, making it impossible to tell what amount of the processing tax, if any, has been passed on to the purchaser of these articles.

Furthermore, the processing tax is levied upon the first processing of the rough rice and must be paid by the end of the calendar month following the month in which the processing occurred. On the other hand, when a lot of rough rice has been processed in any month, some of the grades may be sold immediately, whereas some of the other grades produced from said rice may be kept for several months before being sold, and it is thus impossible to tell how much has been

received for the clean rice and its products that are produced from any month's processing, and it is impossible to tell how much, if any, of said processing tax has been passed on to the purchaser of said clean rice.

Indeed, it is impossible even to determine whether, for any given month, the mill operations have resulted in a gain or loss and it is only at the end of the season that a gain or loss *for the season* can be determined.

In addition, in the cost of rough rice processed during any month, there is an additional item of the cost of the milling of such rice. The cost of milling rice depends upon many factors so that it is impossible to determine what has actually been the cost of milling any particular lot of rice. There are many varieties of rice, some of which have longer grains than others. Different processes of milling must be used for each different kind and variety of rice, and where the plaintiff and other millers have on hand varied and sundry varieties and kinds of rice it is necessary in the operation of the mill to change quickly from one kind of rice to another as the milling of one lot of rice is completed and the milling of another kind begun. In addition, lots of rice of the same variety will vary the one from the other due to the varying amounts of moisture in the rice, varying conditions under which the rice was harvested, and many other factors, which makes it necessary to vary the operation of the rice mill in many respects as between lots of rice. In addition, the output of a mill in barrels per day varies because of all these factors very considerably. Under all the circumstances, it is impossible for a mill to determine the cost to it of the milling of any particular lot of rice, which cost must necessarily enter into a deter-

mination of whether in selling the clean rice it has included any part, or what part, of the processing tax in the price for which it sells its clean rice and rice products.

In addition, owing to the peculiar nature of the rice business and the customary manner of selling rice that prevails in the rice industry, it is impossible for the plaintiff and other rice millers to determine the cost of any particular rice that has gone into the clean rice that is covered by any particular sale. The clean rice that is obtained from any particular lot of rough rice is not sold in the trade by itself alone. At the beginning of the season plaintiff and other rice mills know approximately the different kinds of rice that they will have during the season. In the early part of the season and as the season progresses, plaintiff and other millers make up samples of rice of the kind that they have determined they will be able to supply during the season. Owing to the varied character of clean rice out-turn from rough rice, these samples are made up of mixtures of different kinds of rice. It has been found impossible to make up such samples entirely of one kind of rice from one lot of rough rice as it is impossible to match in any appreciable quantity a sample of one lot of clean rice with another lot of clean rice. Clean rice is sold on these samples and when an order is obtained for a given amount of clean rice of a certain sample, the plaintiff and other rice millers then find what different lots of clean rice they have on hand which by mixing will produce the samples upon which the sale has been made. As a result, when a sale of clean rice is made, the order is filled by a mixture of clean rice which is made up from many different lots of clean rice. These different lots of clean rice have been milled from different lots of rough rice for which different prices have been paid. As a result the rice that goes into a clean

rice sale has come from many different sources and has been milled under many different conditions and it is impossible to tell exactly the cost of such clean rice under the circumstances. In addition, part of the clean rice obtained from a lot of rough rice may be carried for many months and mixed on different sales with innumerable combinations of other lots of clean rice so that it is impossible to trace through the history of rice processed during any month to determine what price was obtained for it, whether it was sold at a profit or a loss, and what part, if any, of the processing tax has been passed on to the purchaser.

Furthermore, there is no way in which the cost of a lot of rough rice can be allocated between the various grades of rice and the various rice products produced from such lot except by speculation for the use of arbitraries.

In short, it is impossible to determine, statistically or otherwise, where the ultimate burden of the processing tax falls—how much of it is paid by the consumer, how much by the producer, or how much by the processor.

In view of the above facts, the purported remedy given by Section 21(d) of said Agricultural Adjustment Act is wholly inadequate and is in fact a statutory denial of any legal remedy at all.

13.

In addition, the conditions imposed upon the right of the plaintiff to recover taxes paid by it must, under Section 21(d) be established to the satisfaction of the Commissioner of Internal Revenue, and no provision is made for judicial review. The transcript of the hearing before the Commissioner of Internal

Revenue is the sole record of the case on appeal to the Courts. The effect of such section is therefore to limit the function of the judicial review to the determination of whether there was any evidence submitted to the Commissioner of Internal Revenue tending to support the findings of the Commission. Said Section 21(d) therefore deprives the plaintiff of its property without due process of law in violation of the Fifth Amendment to the Constitution.

14.

Under said Section 21(d) of said Agricultural Adjustment Act, if the processing tax has been either passed on or passed back by the plaintiff, then the plaintiff cannot maintain any action to recover the tax, if it is ultimately determined to be invalid, either for its own account or for the account of the persons to whom the processing tax has been thus passed on or passed back by the plaintiff; nor can the persons to whom the processing tax has been thus passed on or passed back maintain such an action on their own account, but all right of action by anyone to recover the tax, if it has been passed on or passed back, has been wholly taken away by said amendments to said Agricultural Adjustment Act. Moreover, Section 21(a) of said Act and Section 405 of the Revenue Act of 1935 deprive the Courts of power to render declaratory judgments with respect to such alleged taxes. By reason of the impossibilities of proof hereinabove referred to, the practical effect of said Act will be to deny taxpayers and the plaintiff all means of securing a judicial decision as to the constitutionality of the processing taxes, unless the Court grants the relief herein sought.

15.

Plaintiff further shows that by Section 30 of said Amendment of August 24, 1935, Section 21(a) was

added to said Act, which in substance provides that no suit to enjoin the collection of any tax imposed by said Act shall be maintained. Plaintiff alleges that said section is not intended to apply, and does not apply, to the injunction prayed for by this plaintiff inasmuch as plaintiff has no adequate remedy at law. Plaintiff alleges, however, that if said section should be interpreted as providing that no injunction should be granted to the plaintiff as prayed for in this cause, then the said section, together with the other provisions of said Act, is invalid and in violation of the Fifth Amendment to the Constitution of the United States, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes will be collected from the plaintiff and the plaintiff will have no remedy to prevent the collection of said unlawful taxes, and will be forever deprived of the right in any manner to test the constitutionality of such taxes.

16.

Said Section 21(d) further denies to the plaintiff a complete and adequate remedy at law, because a multiplicity of claims and suits would be required to enforce such rights as are granted thereunder and because said subsection requires that the facts required to be proved thereunder be established to the satisfaction of the Commissioner of Internal Revenue and makes no provision for a judicial review of his decision.

17.

A refund of processing taxes paid by the plaintiff could not actually be obtained even if it were possible for the plaintiff to prove the negative facts required by subsection (d) of Article 21, because Congress has

not appropriated funds for the payment of such refunds and plaintiff believes, that in view of the aggregate amount involved, there is a reasonable doubt whether such appropriation would ever be made.

18.

Plaintiff is ready, able and willing and hereby offers and agrees that in the event the injunctive relief herein prayed for is granted, it will deposit at such time and in such manner as this Court shall direct the said sums claimed to be due from plaintiff for processing taxes on account of the rice processed by plaintiff during the month of September, 1935, and the plaintiff further offers and agrees that at the end of each month hereafter it will file processing tax returns with the defendant as required by existing laws and regulations and that as and when processing taxes under said returns become due and payable according to existing laws and regulations or any extension lawfully granted to the plaintiff, it will deposit the amount of such taxes in such manner as the Court may direct; all such deposits to abide the final decree in this cause.

Wherefore, plaintiff being without an adequate remedy at law prays:

1. That process issue and be served upon the defendant requiring him to appear and answer this bill, but not under oath, and answer under oath being hereby expressly waived;

2. That pending the hearing of the application for a preliminary injunction hereinafter prayed for, a temporary restraining order issue immediately enjoining and restraining the defendant until the hearing of its application for a preliminary injunction or until

the further order of this Court, from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in Court or otherwise, any processing taxes under and pursuant to said Agricultural Adjustment Act and any interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

3. That notice issue to the defendant advising him that plaintiff is hereby applying for a preliminary injunction and that plaintiff's said application will be heard at a time to be fixed by the Court in said notice, and that upon said hearing a preliminary injunction pending the final disposition of this case be issued enjoining and restraining the defendant from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in Court or otherwise, any processing taxes under and pursuant to said Agricultural Adjustment Act and any interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

4. That at the final hearing of this cause said preliminary injunction shall not have been granted, then that a permanent injunction be granted permanently restraining and enjoining the defendant from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in Court or otherwise, any processing taxes under and pursuant to said Agricultural Adjustment Act and any

interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

5. That at the final hearing it be adjudicated that the provisions of said Agricultural Adjustment Act providing for the levying, assessing and collecting of said processing taxes against and from the plaintiff are invalid, unlawful and unconstitutional on each and every one of the grounds upon which they are hereinabove alleged to be unlawful, invalid and unconstitutional; and that the defendant has no lawful right to attempt in any manner to collect said processing taxes from the plaintiff or any of the penalties or interest thereon purported to be provided for in said Agricultural Adjustment Act;

6. And plaintiff prays for such other and further relief, both general and special, to which it may be justly entitled.

(Signed) A. B. DORE, Plaintiff,
(Signed) JOHN P. BULLINGTON,
HOMER L. BRUCE,
(Signed) BAKER, BOTTS, ANDREWS, & WHARTON,
By JOHN P. BULLINGTON,
Attorneys for Plaintiff.

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, on this day personally appeared A. B. Dore, proprietor of The Dore Rice Mill, who, having been by me first duly sworn, stated on oath that he has read the foregoing and above bill and knows the contents thereof and

that the facts therein set out are true, except as to such facts as are therein stated on information and belief, and that as to those facts so stated to be on information and belief, he believes them to be true.

(Signed) A. B. DORE.

Subscribed and Sworn to before me, this 25th day of October, 1935.

(Signed) SUMPTER D. MARKS, JR.,
(Seal) Notary Public in and for Orleans Parish, Louisiana.

EXHIBIT "A."

Filed October 25, 1935.

Issued April 18, 1935.

United States Department of Agriculture,
Agricultural Adjustment Administration.

Administrative Rulings Relating to the 1935 Southern Rice Production Adjustment Program.

Explanation.

These Administrative Rulings apply to and are part of the Southern Rice Production Adjustment Contract and documents pertaining thereto.

If any of the provisions are not understood, the Community or County Committee should be consulted. No producer should make out and submit to his Community or County Committee an Application or a Contract or other documents pertaining thereto with-

out knowing exactly what he must do in order to receive the benefits of the program.

I. Definitions.—As used in the Southern Rice Production Adjustment Application, Declaration, Contract, Schedule, and these Administrative Rulings:

(a) "Person," "tenant," "landlord," "producer," and "well or canal operator," include individuals, copartnerships, and corporations; and where it is required by the context, the singular shall include the plural.

(b) "Farm" means one contiguous tract of land operated as one unit substantially separate from any other such tract of land.

(c) "Producer" includes persons owning and operating their own farms; tenants operating farms rented for cash; tenants operating farms under a crop-share lease, contract, or agreement; landlords leasing to share tenants; corporations, copartnerships, or individuals furnishing water for production of rice on a share basis; and such other persons or classes of persons as the Secretary may determine to be eligible to sign Southern Rice Production Adjustment Contracts.

(d) "Participation in the production of rice" means sharing as a producer in any manner in the production of rice on a farm.

(e) "Farming Operation" means the production of rice or the participation in the production of rice by a producer.

(f) "Application" means any Application for Rice Acreage Allotment (forms Rice 1 and 2) heretofore or hereafter executed by any producer. "Application

serial number" means the serial number of any such Application.

(g) "Declaration" means any 1935 Southern Rice Declaration of Farm Acreage (form Rice 30) heretofore or hereafter executed by any producer. The "farm serial number" means the serial number of any such Declaration.

(h) "Schedule" means any Producer's Schedule of Rice Acreage (Form Rice-37) heretofore or hereafter executed by any producer. Each such Schedule shall bear the same serial number as the Contract executed by the producer who executes the Schedule.

(i) "Contract" means any 1935 Southern Rice Production Adjustment Contract (Form Rice-36) heretofore or hereafter executed by any producer. The "Contract serial number" means the serial number of any such Contract.

(j) "1935" means the period from January 1, 1935, to December 31, 1935.

(k) "1934" means the period from January 1, 1934 to December 31, 1934.

(l) The term "State base period" means the period of calendar years 1929 to 1933, inclusive.

(m) The "State Allotment" shall be 135,000 acres for Arkansas, 364,500 acres for Louisiana, and 142,500 acres for Texas. The "State Quota" shall be 1,834,722 barrels for Arkansas, 3,898,333 barrels for Louisiana, and 2,010,833 barrels for Texas.

(n) The term "base period" in Arkansas and Louisiana means the period of the calendar years

1929 to 1933, inclusive, and in Texas the years 1931 to 1933, inclusive.

(o) The "production history" of a producer means, as the context may require, the producer's rice acreage or rice production, or both, for the base period as adjusted to the official figures and accepted by the State Committee.

(p) The "producer's Allotment" and the "producer's Quota" means respectively the rice acreage and the rice production assigned by the State Committee, acting for and on behalf of the Secretary, to the producer for 1935 and determined according to the procedure set forth in Administrative Ruling II hereof.

(q) The "acreage allocated" by the producer means that part of a producer's allotment which, in a Declaration, he allocates to a given farm as a basis for determining his share of the total rice acreage planted on that farm in 1935.

(r) "Producer's share of the rice acreage planted" and the "Producer's share of the acreage planted to rice in 1935" each means with respect to any farm, that acreage which bears the same ratio to the total rice acreage planted on that farm in 1935 (as determined upon checking compliance with the Contract in the manner prescribed by the Secretary) that the acreage allocated by the producer to that farm in a Declaration bears to the total rice acreage allocated to that farm in such Declaration.

(s) The "Secretary" means the Secretary of Agriculture of the United States.

(t) "Rice Section" means the Rice Section of the Agricultural Adjustment Administration.

(u) "Official figures" means the records of acreage and production prepared by the United States Department of Agriculture.

(v) A "barrel" means 162 pounds of rough rice.

(w) A "bushel" means 45 pounds of rough rice.

II. Determination of Allotments and Quotas.—1. The allotment of a producer shall be determined by each State Committee as follows: (a) Add the acreage of rice planted annually by each producer for his own account during the base period, after adjustment of acreage of all producers to the official figures for each state for each of the years of the base period; (b) Divide the total thus secured by five (5) in Louisiana and in Arkansas, and the total thus secured by three (3) in Texas; (c) Reduce the result obtained by 20 per cent in Louisiana and in Arkansas and the result obtained by 22 percent in Texas.

The total allotments assigned to producers in each state shall not in any event exceed the state allotment for that state.

2 The quota of a producer shall be determined by each State Committee as follows: (a) Add the number of barrels of rough rice produced annually by each producer for his own account during the base period, after adjustment of the production of all producers to official figures for each state for each of the years of the base period; (b) Divide the total thus secured by five (5) in Louisiana and in Arkansas, and the total thus secured by three (3) in Texas; (c) Reduce the result obtained by 20 percent in Louisiana and in Arkansas and the result obtained by 22 percent in Texas.

The total quotas assigned to producers in each state shall not in any event exceed the state quota for that state.

3. If the total of allotments and quotas determined according to the provisions of sections 1 and 2 of this numbered ruling, in any state, is less than the State Allotment and State Quota such excess may be allocated to producers by the State Committee, subject to approval by the Secretary or his authorized agent.

4. The Allotment and Quota are based upon the personal production history of the producer, regardless of where the rice was produced and are the measure of such history. The producer's production history shall not be transferred except as the State Committee shall, in writing, approve transfers made pursuant to the provisions of subsections a, b, and c of this numbered paragraph 4 of Administrative Ruling II. All requests for transfer of production history shall be in writing, signed by, or on behalf of the producer by his duly authorized agent, and approval thereof shall be in writing signed by at least two members of the State Committee. In no event shall the State Committee approve the transfer of production history by reason of foreclosure, execution or any forced sale.

(a) If a producer has died or has been declared legally incompetent by a Court of competent jurisdiction and has not executed, prior to the date of such death or incompetency, an Application for an allotment and quota, his records of production may be used by such heirs or devisees, or such member of the family of such deceased producer or by such members of the family of such incompetent producer as are continuing the farming operation of the deceased or incompetent producer, upon their furnishing proof of such relation-

ship and succession to the producer's farming operation.

(b) If a well or canal operator voluntarily sells his well or canal system and has not executed an application, his production history shall be transferred to such successor, provided that the former well or canal operator was not engaged in farming operations in 1934.

(c) If a partnership is dissolved before an application for an allotment and quota has been executed by or on behalf of the partnership, its records of rice production for the base period shall be divided among the partners in such proportions as is agreed upon by the partners or their authorized representatives in writing submitted to the State Committee.

5. In all figures representing final determination of individual allotments and quotas, fractions amounting to one-half a unit or less shall be dropped and fractions amounting to more than one-half a unit shall be considered a whole unit.

6. If a producer during the base period had operated in more than one state, he shall apply for an allotment and quota to the State Committee of each state in which he had farmed during the base period. Only the history earned by the producer in that state shall be presented to the State Committee in his Application. No producer shall be assigned Allotments and Quotas in two or more states, larger in the aggregate, than the Allotments and Quotas assignable to him in one state, had all of his farming operations been confined to that one state.

7. The sum of all Allotments and of all Quotas within a State shall not in any event exceed the State Allotment and Quota, respectively.

III. Transfer of Allotment and Quota.—The producer's Allotment and Quota shall not be transferred except as the State Committee shall in writing approve transfers made pursuant to the provisions of subsections a, b, c, and d of this Ruling III. In no event shall the State Committee approve the transfer of an Allotment or Quota by reason of foreclosure, execution, or any forced sale. All requests for transfer shall be made in writing signed by or on behalf of the producer by his duly authorized agent, and approval thereof shall be in writing signed by at least two members of the State Committee.

(a) If a producer dies or has been declared incompetent by a Court of competent jurisdiction after executing an Application but before executing a Contract, his allotment and quota may be transferred to such heirs, devisees, or such members of the family of such deceased producer or such members of the family of such incompetent producer as are continuing the farming operations of the deceased or incompetent producer, upon their furnishing proof of such relationship and succession to the producer's farming operation.

(b) If a producer voluntarily withdraws, either wholly or in part, from the production of rice after executing an Application but before executing a Contract, he may transfer all or part of his Allotment and Quota to such persons as are continuing his farming operation, upon proof of such withdrawal and succession.

(c) If a producer has become disabled and has retired from the production of rice after executing an Application but before executing a Contract, he may transfer all or part of his Allotment and Quota to such

person as is continuing his farming operations upon proof of such disability, retirement, and succession.

(d) Upon dissolution of a partnership, after an Application has been executed by or on behalf of the partnership, but before a Contract has been executed by or on behalf of the partnership, the Allotment and Quota shall be divided among the partners in such proportions as is agreed upon by the partners or their duly authorized representatives in writing submitted to the State Committee.

IV. Use of Allotment and Quotas by Well or Canal Operators.—If a well or canal operator has an allotment and quota assigned to him by the State Committee on the basis of his personal history as a furnisher of water on a crop share basis, such well or canal operator shall not change his status so as to use such allotment and quota in a capacity other than as a furnisher of water on a share crop basis.

V. Signing of Application, Declaration, Contracts, and Other Documents by a Person in a Representative Capacity.—

(1) In the event any document is to be executed on behalf of a Corporation, it shall be signed on behalf of the Corporation by an officer of the Corporation, who shall state his title, and affix the corporate seal to the Contract, (If the Corporation has no corporate seal, the following statement in writing shall appear over the signature, "No corporate seal required or adopted,") or by a representative of the corporation other than an officer, who has been authorized by the corporation to execute the contract by power of attorney, under seal, duly executed on behalf of the corporation on a prescribed form and filed with the Comptroller of the Agricultural Adjustment Administration at Washington, D. C., or

attached to the contract, which authorization shall be considered a part of the contract documents.

(2) In the event a document is to be signed by an executor, administrator, guardian of an incompetent person, receiver, or other person appointed by a Court in a fiduciary capacity, there shall be furnished either the original or a certified copy of the Court order of appointment or a certificate on a prescribed form showing that such person was duly appointed as such fiduciary and that the appointment is still in full force and effect.

(3) Where a document is signed by a manager or an agent for a producer, the original or a certified copy of a Power of Attorney, on a prescribed form, authorizing the manager or agent so to sign shall be furnished.

(4) If the producer is a Governmental body or agency, there shall be attached to the document a certified copy of a resolution of the Board or other authority authorized by statute to lease and contract in regard to the land and personal property covered by the contract, authorizing the execution of such document by the person executing the document on its behalf.

(5) When one producer has several documents to be signed by the same agent or attorney, a properly executed power of attorney may be filed with the Comptroller of the Agricultural Adjustment Administration to cover all such cases, and shall be considered as a part of each document so signed.

(6) A document to be signed for a partnership shall be executed in the name of the partnership and of each partner as an individual, by each member of

the partnership, or on behalf of each partner who does not personally sign, by an agent duly authorized to so sign by a Power of Attorney, on a prescribed form.

VI. Pledge of Adjustment Payments.—Adjustment payments may not be assigned under any condition. This is forbidden by the Contract, as well as prohibited by law.

However, the producer's right to adjustment payments under the Contract may be pledged in order to obtain funds (or credit) for carrying on the current operation of the farm. The expression "funds" (or credit) for carrying on the current operation of the farm and "current production credit" means funds or credit to meet any necessary expense of preparing of land, planting, cultivating, watering, harvesting, and marketing of the rice crop grown in the year 1935. Without in any way limiting the exclusiveness of the above definition, the expression shall not include cash rent or debts incurred in connection with the production of past crops.

No pledge of any producer's right to adjustment payments under his contract for any purpose other than to procure current production credit as defined above shall give rise to any obligation under the Contract upon any payee designated therein by the producer to distribute such payment, when and if accepted by such payee, to the person claiming to hold such a pledge not given for current production credit.

Dated April 18, 1935.

R. G. TUGWELL,
Acting Secretary of Agriculture.

EXHIBIT "B".

Filed Oct. 25, 1935.

Form Rice 36,
U. S. Department of Agriculture,
Agricultural Adjustment Administration,
Rice Section.
Form approved by Comptroller General, U. S.,
May 1, 1935.

1935 Southern Rice Production Adjustment Contract.

(Pursuant to and to effectuate the purposes of the Agricultural Adjustment Act, approved May 12, 1933, as amended, hereinafter referred to as the Act.)

I. Performance by Producer:

1. The undersigned producer (and each and all of them if more than one signs this instrument) hereby offer(s) to enter into a contract with the Secretary of Agriculture (hereinafter referred to as the "Secretary") upon the terms and conditions hereinafter set forth and subject to such regulations or administrative rulings (which shall be part of the terms and conditions of this contract) as have been heretofore or may hereafter be prescribed by the Secretary relating to 1935 Southern Rice Production Adjustment Contracts. This contract shall apply to every farm upon which the producer participates in any manner in the production of rice in 1935 (hereinafter referred to as "the farm(s) covered by this contract"). This offer shall become a binding contract upon its acceptance by the Secretary.

2. The producer,

(a) Represents that he has allocated to each farm upon which he will participate in any manner in the production of rice in 1935 some part of his allotment and that the total acreage allocated by the producer to all such farms does not exceed his allotment;

(b) Agrees that he will not share or participate in any manner in the production of rice in 1935 on any farm to which he has not allocated a portion of his allotment;

(c) Agrees that for the purposes of checking compliance and making payments under this contract "the producer's share of the acreage planted to rice in 1935" on each farm covered by this contract shall be that acreage actually planted to rice on such farm in 1935 which bears the same ratio to the total acreage planted to rice on such farm in 1935 that the acreage allocated by the producer to such farm bears to the total acreage allocated thereto by all persons participating in the production of rice thereon;

(d) Agrees that his total share of the acreage planted to rice in 1935 on all the farms covered by this contract shall not exceed his allotment;

(e) Agrees that the acreage permitted under this contract to be planted to rice in 1935 shall be farmed in a workmanlike manner throughout 1935;

(f) Applies for membership in the Rice Production Control Association organized pursuant to Form Rice 35 in each County or Parish in which a farm covered by this contract is located;

(g) Agrees to permit access by any authorized agent of the Secretary to the farm(s) covered by this contract, and to all fiscal books, records, and documents, regardless of where located, pertaining to the

production and/or sale of rice on or from any and all of such farms, and expressly waives any right to have such records kept confidential;

(h) Agrees not to sell, pledge, transfer, or assign, in whole or in part, this contract or his right to or claim for payments under this contract, and not to execute any power of attorney to collect such payments, and any sale, pledge or assignment, order or power of attorney shall be null and void, except that the producer may pledge or hypothecate his right to any adjustment payments under this contract for the purpose of obtaining funds (or credit) for carrying on the current operation of the farm(s) covered by this contract (hereinafter referred to as "current production credit") and such pledge or hypothecation shall operate to establish an interest or right on the part of the pledgee in and to said adjustment payments as against any other person or persons, but the pledge or hypothecation thereof shall not alter the provisions of paragraph 5 that all adjustment payment checks drawn in compliance with this contract shall be made payable to the payee therein stipulated. If the adjustment payments herein provided for shall have been pledged by the producer for current production credit, the producer, or if a payee is designated in paragraph 5 hereof and accepts such payment, then such payee if notified in writing of the pledge, shall receive the adjustment payment in trust to pay therefrom to the pledgee the amount of the obligation owing for current production credit secured by such pledge and to pay the balance of said payment to the producer. If a payee other than the producer is named in paragraph 5 hereof, and if such payee shall not have been notified of any pledge of the adjustment payments for current production credit made pursuant to the terms of this numbered paragraph, such payee shall receive such payments in trust to pay the whole amount

thereof to the producer, it being expressly understood and agreed that the Secretary shall have no duty or obligation to see that distribution is made in accordance with the foregoing provisions, but shall have the right to enforce the performance of said trust by the payee;

(i) Represents that the statements contained herein are true to the best of his information and belief. Without limitation of any other right or remedy of the Secretary conferred by law or this contract, a material misstatement herein or in any information furnished by the producer in connection with this contract or any noncompliance by the producer with any of the terms hereof, or with any applicable regulation or administrative ruling which has been or may hereafter be prescribed by the Secretary with reference to 1935 Southern Rice Production Adjustment Contracts shall be grounds for termination of this contract by the Secretary. The determination of the Secretary that any such misstatement or noncompliance has occurred shall be final and conclusive. In the event of termination of this contract by the Secretary, the producer shall return to the Secretary all payments theretofore made under this contract, together with all costs incident to the collection thereof.

II. Performance by Secretary:

3. Amount of Payments.—The Secretary shall, as a consideration for the performance by the producer of all the terms and conditions of this contract, and in the manner and at the times specified in paragraph 4 hereof, make

(1) A first adjustment payment at a rate of 81 cents per barrel of rice, and

(2) A second adjustment payment at a rate per barrel of rice, uniformly applicable to all such contracts, to be determined by the Secretary,

upon an amount of rice determined in the manner specified in sub-paragraph (a) or (b) of this numbered paragraph, whichever shall apply:

(a) If the producer's total share of the acreage planted to rice in 1935 on all the farm(s) covered by this contract is not more than 100 per cent nor less than 85 per cent of the producer's allotment, such payments shall be made upon that number of barrels of rice which equals 85 per cent of the producer's quota.

(b) If the producer's total share of the acreage planted to rice in 1935 on all the farm(s) covered by this contract is less than 85 per cent of the producer's allotment, such payments shall be made upon that number of barrels of rice which bears the same ratio to the producer's quota that the producer's total share of the acreage planted to rice in 1935 on all such farms bears to the producer's allotment.

4. Time of Payments.

(a) The first adjustment payment shall be made as soon as practicable after August 1, 1935, provided that proof satisfactory to the Secretary, of compliance with the terms and conditions of this contract, has been submitted to the Secretary or his authorized agent.

(b) The second adjustment payment shall be made as soon as practicable after December 1, 1935, provided that proof satisfactory to the Secretary, of compliance with the terms and conditions of this contract, has been submitted to the Secretary or his authorized agent.

5. (a) All adjustment payments hereunder are for the benefit of the producer and shall be made only to the producer unless the producer shall, by naming another person in this numbered paragraph, direct that such payments be made to the person so named, in which event the payments shall be made by check drawn payable to the person so named who shall receive them subject to the provisions of this contract, and particularly subject to the provisions of subparagraph (h) of paragraph 2 hereof. If the person so named shall have died or shall refuse to accept such payment, or shall for any reason be unable to receive and distribute such payment subject to the provisions of this contract then such payment shall be made to the producer, who likewise shall receive such payments subject to the provisions of this contract and particularly subject to the provisions of subparagraph (h) of paragraph 2 hereof.

(Stamp State and County code above.)

State..... Parish } .....
County }
Community..... Contract }
Serial No. } .....

5. (b) Designated payee .....
of.....
(Address of payee)

III. Signature(s) of Producer(s).

6. In Witness Whereof, each of the undersigned has hereunto set his hand on the date indicated opposite his signature.

...., 1935.
(Witness) (Date of Producer's signature)

....
(Signature of Producer) (Application No.)

Address of Producer (Rural Route No.) .... (Box No.) .... (Post Office) ..... (State) .....

...., 1935.
(Witness) (Date of Producer's signature)

....
(Signature of Producer) (Application No.)

Address of Producer (Rural Route No.) .... (Box No.) .... (Post Office) ..... (State) .....

IV. Certification of Committees.

We Hereby Certify that we have examined the foregoing offer and that, to the best of our information and belief, the total acreage allocated by the producer to all the farm(s) covered by this contract does not exceed the producer's allotment, and hereby recommend that the foregoing offer be accepted by the Secretary.

.....
(For Community Committee)

.....
(For County Committee)

.....
(For State Committee)

.....
(For Community Committee)

.....
(For County Committee)

.....
(For State Committee)

Date...., 1935. Date....., 1935. Date....., 1935.

V. Acceptance by Secretary.

In consideration of and in reliance upon the agreements of the producer herein set forth and the repre-

sentations made by the producer in and in connection with this contract, this offer is hereby accepted, this .....day of ....., 1935.

HENRY A. WALLACE,
Secretary of Agriculture, for and on behalf of the United States,

By .....,
Representative of Secretary of Agriculture.

VI. State Committee's Certificate of Compliance.

The undersigned State committeemen certify that the producer's total share of the acreage planted to rice in 1935 on all farm(s) covered by this Contract does not exceed the producer's allotment, and further certify that the producer's allotment and quota and the producer's total share of the acreage planted to rice in 1935 on all farms upon which the producer is participating in the production of rice in 1935 are correctly stated in items 1, 2, and 3, respectively, of part VIII below, and further certify that to the best of their information and belief the producer has fully complied with all terms of this Contract and all regulations and administrative rulings issued by the Secretary applicable up to and including the date of this certificate.

Date ....., 1935.

.....
(For State Committee)

.....
(For State Committee)

VII. Producer's Certificate of Compliance.

The producer certifies that his total share of the acreage planted to rice in 1935 on all farms upon which he is participating in any manner in the production of

rice does not exceed his allotment, that his allotment and quota, and his total share of the acreage planted to rice in 1935 on all farms on which he is participating in any manner in the production of rice in 1935 are correctly stated in items 1, 2, and 3, respectively, in part VIII of this contract, and further certifies that he is not sharing in the production of rice on any farms covered by this Contract are being farmed in a workmanlike manner, and that he has fully complied with all other terms of this Contract, and with all regulations and administrative rulings issued by the Secretary, applicable up to and including the date of this certification.

..... (Witness)
Date....., 1935.

....., (Producer.)

VIII. Certified Basis for Determining Payments.

1. Producer's allotment .....(acres) .....
2. Producer's quota .....(bbl.) .....
3. Producer's share of acreage measured .....
4. Quota percentage (item 3 ÷ item 1)..... .....%*
5. Number of barrels for payment (item 4 times item 2) ....

*If the above percentage is not more than 100 nor less than 85 per cent, then 85 per cent shall be used.

Do not write in this blank; for use by Comptroller's Office.

Computation of payments:

1935 first adjustment payment Item 5 times 81¢ per bbl. .....$.....

1935 second adjustment payment, Item 5
times ....¢ per bbl.....$.....

Total .....$.....

Do Not Write in Space Below.

Certificate of Comptroller.

Audited and approved for 1935 first adjustment payment in the amount of ..... $.....

JOHN B. PAYNE,
Comptroller,

By .....,
Auditor.

Schedule No. .....

Date.....

Paid ..... by check on Treasurer of the United States in favor of payee or payees named thereon.

Check No..... $.....

Certificate of Comptroller.

Audited and approved for 1935 second adjustment payment in the amount of ..... $.....

JOHN B. PAYNE,
Comptroller,

By .....,
Auditor.

Schedule No. .....

Date.....

Paid ..... by check on Treasurer of the United States in favor of payee or payees named thereon.

Check No..... $.....

(Any intentional misrepresentation of fact made in this contract for the purpose of defrauding the United States will be subject to the criminal provisions of the United States Code.)

EXHIBIT "C".

Filed October 25, 1935.

Sec. 21. (a) No suit, action, or proceeding (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any Court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (d) of this section, may be reserved in the Court's order.

(b) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regulations of the Secretary with the approval of the President prior to the date of the adoption of this amendment,

are hereby legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which have accrued and remain unpaid on the date of the adoption of this amendment shall be assessed and collected pursuant to section 19, and to the provisions of law made applicable thereby. Nothing in this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary of Agriculture or of the President done or made prior to the date of the adoption of this amendment.

(c) The making of rental and benefit payments under this title, prior to the date of the adoption of this amendment, as determined, prescribed, proclaimed and made effective by the proclamations of the Secretary of Agriculture or of the President or by regulations of the Secretary, and the initiation, if formally approved by the Secretary of Agriculture prior to such date of adjustment programs under section 8 (1) of this title, and the making of agreements with producers prior to such date, and the adoption of other voluntary methods prior to such date, by the Secretary of Agriculture under this title, and rental and benefit payments made pursuant thereto, are hereby legalized and ratified, and the making of all such agreements and payments, the initiation of such programs, and the adoption of all such methods prior to such date are hereby legalized, ratified, and confirmed as fully to all intents and purposes as if each such agreement, program, method, and payment had been specifically authorized and made effective and the rate and amount thereof fixed specifically by prior Act of Congress.

(d) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the Court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be refunded or credited to any person (not

a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (a) and (b) of section 16, had the tax terminated by proclamation pursuant to the provisions of section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish to the satisfaction of the Commissioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the Court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any Court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held invalid a claim therefor (conforming to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2)

no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such Courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, on jurisdiction of such Courts based upon the amount in controversy.

(e) In connection with the establishment, by any claimant, of the facts required to be established in subsection (d) of this section, the Commissioner of Internal Revenue is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda, relative to any matter affecting the findings to be made by the Commissioner pursuant to subsection (d) of this section, to require the attendance of the claimant or of any officer or employee of the claimant, or the attendance of any other person having knowledge in the premises, and to take, or cause to be taken, his testimony with reference to any such matter, with power to administer oaths to such person or persons. It shall be lawful for the Commissioner, or any collector designated by him, to summon witnesses on behalf of the United States or of any claimant to appear before the Commissioner, or before any person designated by him, at a time and place named in the

summons, and to produce such books, papers, correspondence, memoranda, or other records as the Commissioner may deem relevant or material, and to give testimony or answer interrogatories, under oath, relating to any matter affecting the findings to be made by the Commissioner pursuant to subsection (d) of this section. The provisions of Revised Statutes 3174 and of Revised Statutes 3175 shall be applicable with respect to any summons issued pursuant to the provisions of this subsection. Any witness summoned under this subsection shall be paid, by the party on whose behalf such witness was summoned, the same fees and mileage as are paid witnesses in the Courts of the United States. All information obtained by the Commissioner pursuant to this subsection shall be available to the Secretary of Agriculture upon written request therefor. Such information shall be kept confidential by all officers and employees of the Department of Agriculture, and any such officer or employee who violates this requirement shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both, and shall be removed from office.

(f) No refund, credit, or abatement shall be made or allowed of the amount of any tax, under section 15, or section 17, unless, within one year after the right to such refund, credit, or abatement has accrued, a claim for such refund, credit, or abatement (conforming to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled to such refund, credit, or abatement, except that if the right to any such refund, credit, or abatement accrued prior to the date of the adoption of this amendment, then such one year period shall be computed from the date of this amendment. No interest shall be allowed or paid, or included in any judgment, with respect to any such claim for refund or credit.

(g) The provisions of section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax, or any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of section 317 of the Tariff Act of 1930.

RETURN TO RULE TO SHOW CAUSE WHY TEMPORARY INJUNCTION SHOULD NOT ISSUE.

Filed Oct 28th, 1935.

(Title Omitted.)

To the Honorable the Judge of the District Court of the United States in and for the Eastern District of Louisiana:

Now into Court comes Rufus W. Fontenot, Acting Collector of Internal Revenue, Defendant in the above entitled and numbered cause, through Rene A. Viosca, United States Attorney in and for the Eastern District of Louisiana, and Robert Weinstein, Assistant United States Attorney for said District, his attorneys, and by virtue of the rules and practice of this Court requiring the defendant in rule to file all defenses to the rule on the date set for the hearing on the application for a temporary injunction, and with full reservation of all of his rights under the pleadings in this cause,

answers the rule by stating that for lack of sufficient information to justify a belief he denies all of the allegations of paragraph two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen of the Bill of Complaint, and also denies the allegations of paragraph one with the exception of the statement relative to the defendant, which statement is admitted.

Your Respondent further avers that the proceedings should be dismissed for the reasons that this Honorable Court has no jurisdiction and that the Agricultural Adjustment Act is constitutional, valid and enforceable.

Wherefore, your Respondent prays this Honorable Court to dismiss the Bill of Complaint at Complainant's costs and to refuse granting any injunction in these proceedings, and for all general and equitable relief.

(Signed) RENE A. VIOSCA,
United States Attorney.
(Signed) ROBERT WEINSTEIN,
Asst. United States Attorney.

(Verification.)

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, personally came Rene A. Viosca, who is the United States Attorney for the Eastern District of Louisiana, who in his oath says: That in his aforesaid official capacity he is of counsel for defendant in the above case; that he has drawn the return to the rule to show cause and that all the allegations of fact therein are true and correct to the best of his knowledge, information and belief.

(Signed) RENE A. VIOSCA.

Sworn to and subscribed before me this 28th day of October, 1935.

(Signed) CLAUDE D. SHAW,
Deputy Clerk, U. S. District Court, Eastern District of Louisiana.

MOTION TO DISMISS.

Filed Oct. 28, 1935.

(Title Omitted.)

To the Honorable, the Judge of the District Court of the United States in and for the Eastern District of Louisiana:

Comes now Rufus W. Fontenot, Acting Collector of Internal Revenue, defendant in the above entitled and numbered cause, by Rene A. Viosca, United States Attorney in and for the Eastern District of Louisiana, and Robert Weinstein, Assistant United States Attorney for said District, his attorneys, with full reservation of his rights to further plead in this cause, and moves the Court to dismiss the Bill of Complaint filed herein, with costs to be paid by the Complainant upon the following grounds and for the following reasons:

I.

That this Court is without jurisdiction to restrain or enjoin the collection of taxes herein involved, or to hear and/or determine the issues presented by said bill of complaint because:

1. Section 3224 of the Revised Statutes of the United States prohibits the maintaining in any Court of a suit for the purpose of restraining the assessment and/or collection of Federal Tax.

2. Section 21-A of the Agricultural Adjustment Act, as amended, prohibits the maintaining in any Court of a suit for the purpose of restraining the assessment and/or collection of any processing tax under the said Agricultural Adjustment Act.

3. The bill of complaint sets forth no facts which, if true, would entitle complainant to the relief prayed for in a Court of Equity.

4. Complainant has a plain, adequate and complete remedy in the ordinary course of law.

II.

That the United States of America is the real party in interest, which may not be sued without its consent.

III.

That there is no actual controversy between complainant and defendant or between any parties over which this Court has jurisdiction within the purview of the Declaratory Judgment Act.

IV.

That the Declaratory Judgment Act was not intended by the Congress to be used for the litigation of questions arising under the Revenue Laws, and particularly was not intended as a means for obtaining injunctive relief.

V.

This proceeding is prohibited by the provisions of the Declaratory Judgment Act, as amended, and cannot be maintained. (Revenue Act of 1935, approved August 31, 1935, Section 405).

Dated: this 28th day of October, 1935.

(Sgd.) RENE A. VIOSCA,
United States Attorney.

(Sgd.) ROBERT WEINSTEIN,
Assistant United States Attorney.

ORDER OF COURT CONSOLIDATING ALL CASES FOR TRIAL, ETC.

Filed Oct. 28, 1935.

United States District Court, Eastern District of Louisiana, New Orleans Division.

Docket No. 321—In Equity:

Rickert Rice Mills, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 322—In Equity:

A. B. Dore, doing business under the name of The Dore Rice Mill,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 323—In Equity:

United Rice Milling Products Co., Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 324—In Equity:

Baton Rouge Rice Mill, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 325—In Equity:

T. Simon
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 326—In Equity.

Levy Rice Milling Company, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 327—In Equity:

Farmers Rice Milling Company, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 328—In Equity:

Noble-Trotter Rice Milling Co., Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Considering the stipulation and agreement of counsel for all parties made this day in open Court;

It is Ordered that the above numbered and entitled cases be and they are hereby consolidated for the

purpose of trial and that the affidavits and evidence offered in one case be considered to apply to all.

(Signed) JOHN McDUFFIE, Judge.

New Orleans, Louisiana, October 28, 1935.

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, on this day personally appeared W. M. Reid, known to me, who being by me first duly sworn in terms of law deposed and said on his oath as follows:

My name is W. M. Reid. I reside in New Orleans, Louisiana, and am Executive Secretary of the Rice Millers' Association. My principal duties are the preparation and interpretation of statistical and economic data with regard to the rice milling industry. I have been engaged in the rice milling business since 1909, and from 1916 to 1928, I personally operated a rice mill. I am thoroughly familiar with the rice milling industry in all of its phases.

I have read all of the allegations contained in Section 12 of Plaintiff's bill of complaint and Equity 321, Rickert Rice Milling Company vs. Rufus W. Fontenot, Equity 322, A. B. Dore vs. Rufus W. Fontenot, Equity 323, United Rice Milling Products Company, Inc., vs. Rufus W. Fontenot and companion cases, and all of such allegations are true and correct in every respect.

It is true that rice millers, when they purchase rough rice, consider the fact that they will have to pay a processing tax on the milling of such rough rice. However, this is simply one of the many factors entering into the miller's determination of what he ought to

pay for rough rice. As a practical matter, when the rice miller negotiates for the purchase of a given lot of rice, he first estimates what he believes he could get for such rice after milling on the existing market for clean rice and rice products. He then estimates what he thinks it will cost him to process the rough rice into its various grades and products, and in this estimate is included the amount of the processing tax, as well as other taxes. Having made these estimates, he determines what he ought to pay for the rough rice. However this is not necessarily what he does pay, because each individual miller is buying in competition with other millers. Thus, if other millers are paying more than he thinks he ought to pay, he has to meet the price the others are paying, if he is to get any rice. No individual miller makes the rough rice market. It is a market made of the composite purchasing of all millers in the particular territory. While the estimates above referred to are made with regard to the market for clean rice and rice products at the time of the purchase of the rough rice, that market, however, does not necessarily control since rough rice is not ordinarily milled, and the clean rice and products sold until several months after the purchase of the rough rice.

Since the market for clean rice and rice products fluctuates from day to day and month to month, the prospects of the future market has a bearing on what the miller may have to pay for rough rice. Optimism with reference to the future market for clean rice on the part of a sufficient number of rice millers will force up the market for rough rice, and all millers will have to meet the increased price of rough rice (if they are to have any rice at all), even though some of them may be pessimistic as to the future market.

For example, the present market price of rough rice is quite high with reference to the present market price for clean rice and rice products. In other words, using the estimates above referred to, the cost

of rough rice on today's market plus estimated cost of milling (including the processing tax) is more than the miller could reasonably expect to procure for the rice and rice products made from such rough rice on the existing market for clean rice and rice products. This present day market for rough rice is not made by any individual miller, but is made by the composite of purchases by all millers in the territory. Thus, as I have previously said, while the processing tax is considered by the miller in determining what he ought to pay for rough rice, it is simply one of many factors entering into such determination, and is by no means controlling.

Furthermore, it is impossible to tell on any given purchase of rough rice how much, if at all, that price has been affected by the existence of the processing tax.

I am familiar with accounting and statistical methods, and I know of no possible method of keeping books and records in the rice business which would accurately reflect the gain or loss from the purchase, milling and sale of any given lot of rice as distinguished from the gain or loss from the aggregate of all transactions during a season. A profit or loss, however, may be estimated at any given time by the use of averages, predictions and arbitraries.

The rice milling business is seasonal; the season beginning on August 1st and ending on July 31st, the operations gradually increasing until the peak is reached during the months of October, November and December, and decreasing to the end of the season. For this reason as well as others, the cost of milling varies greatly from time to time during the season. The estimated cost of milling which millers use in budgeting and determining what they want to pay for rough rice is arrived at by averaging the cost of the entire season so that this factor, when used to estimate a profit or loss on a given transaction, could never be exact, and might be very

much too high or very much too low when applied to that particular transaction.

Under these circumstances, when a miller purchases a particular lot of rice, he may believe that all, or a part of the processing tax to be assessed on such rice will be absorbed by the farmer. On the other hand, he may believe that all, or a part of such tax will be absorbed by himself. However, he can never even know, much less prove, even after all the clean rice and rice products made from the particular lot of rough rice has been sold whether he, or the farmer, or the purchaser, or all of them together has borne the ultimate economic burden of the tax. This is because any belief he may have had as to whether the burden of the tax would fall, must of necessity, have been based in part on estimates, which are in turn, based on averages, which are never accurate with respect to any given lot of rice. In addition, such belief must also be based in part on assumptions as to market conditions on clean rice and rice products, which may or may not be correct. The rough rice may go through the mill on a day when large amounts are being milled, and the cost per unit is lower than the average; or, it might go through on a day when little rice was being milled resulting in a unit cost higher than the average; or, it might go through partly on one kind of a day, and partly on another. Furthermore, the rice may not mill out what he expected, even if the market on clean rice and rice products remains the same. And, in addition, the price at which he eventually sells the clean rice and rice products may be substantially less or substantially more than the sale price on which he based his presumptions.

There is no necessary relation between the market for clean rice and for rice products, since they are sold for different purposes, and this is an added reason why the miller cannot possibly allocate the cost of a given lot of rough rice among the clean rice and rice products produced from it.

For example, it is entirely possible for the market on bran or hulls to be relatively high, while the market on the various grades of head rice is relatively low.

The rough rice market is affected by the clean rice and rice products market and vice versa, but it is as impossible to determine their relative affect on each other as it is to determine whether the hen or the egg came first. I know of no way of determining what either the rough rice or clean rice marked would be if there were no processing tax. I do know, however, that the individual miller cannot force down the price paid to the farmer for rough rice because of the tax, and thus force the farmer to pay all, or a part of the burden of the tax. The individual miller simply pays the market price for rough rice which has been fixed by the composite action of all millers, and it would be impossible to prove whether a lowering of the rough rice market was the result of the assessment of the tax, or whether it was caused by other factors, such as a drop in time clean rice and rice products market, a composite pessimism on the part of rice millers as to the future market or other factors. The same thing is true with regard to the market for clean rice and rice products, and no individual miller can arbitrarily force that market upwards in order to pass on the tax.

(Sgd.) W. M. REID.

Sworn and subscribed to before me, the undersigned authority, this 28 day of October, 1935.

(Sgd.) HARRY R. CABRAL.

(Seal) Notary Public.

State of Texas,
County of Harris.

Before me, the undersigned authority, on this day personally appeared Homer L. Bruce, who, having been by me duly sworn, stated on oath as follows:

He lives in Houston, Harris County, Texas, and is duly licensed and practicing attorney at law. He is

familiar with the bills of complaint that are being presented to the United States District Court at New Orleans, Louisiana, on behalf of certain rice millers of Louisiana seeking an injunction against the collection of processing taxes on rice, having worked with his partner Mr. John P. Bullington in the preparation of said bills of complaint, and is familiar with the general practice of the rice industry of selling rice on samples and the filling of orders for clean rice by mixing rice from different lots of clean rice in the manner set out in the bills of complaint.

This affidavit is made in connection with the allegations in said bills that it is impossible for the plaintiff rice millers to comply with the requirements of Section 21 (d) of the Agricultural Adjustment Act that they shall establish that no part of the processing tax has been passed on to the consumer or taken out of the price paid the producer before they are allowed to recover any processing taxes paid.

Section 8 (3) of the Agricultural Adjustment Act gave the Secretary of Agriculture authority to issue licenses to processors, including processors of rice, and provided that the Secretary should have the right to revoke any license for violations of its terms. Section 8 (2) of the same Act authorized the Secretary to enter into marketing agreements with processors.

In the fall of 1933, the Secretary entered into a marketing agreement with members of the southern rice milling industry, and at the same time issued a license applicable to all mills. This marketing agreement and the license were in substantially the same form. Later various amendments were made to both the marketing agreement and the license.

In the marketing agreement and in the license, the Secretary of Agriculture fixed the price to be paid to farmers for rough rice, these prices being set out in Article III of the marketing agreement and license hereinafter referred to, namely, the one effective on July 21, 1934. Article IV, Section 1 of the license

effective July 21, 1934, set out the minimum price that millers might sell clean rice for in the domestic market and that section is as follows:

"Section 1. To effectuate the purposes of this Amended license and to aid in the carrying out and enforcement of the provisions hereof, no miller shall offer for sale, sell or deliver for domestic consumption any quantity of clean rice for an amount per pocket less than the sum of

(a) the minimum price, determined pursuant to article III and Schedule 1, for the grade, variety and quantity of the rough rice from which such clean rice was milled,

(b) the conversion charge for such quantity of rough rice and prevailing at the time of such offer, sale or delivery, and

(c) the published car lot rail rate for transporting such rough rice from the customary point of delivery to the miller's mill, and

(d) the administrative assessment for such quantity of rough rice and prevailing when such rice was milled;

Provided, however, that any miller may offer clean rice for sale for export to foreign countries, on the foregoing basis less a maximum discount of 20 cents per barrel of such rough rice and may, if the rice is actually exported, sell or deliver clean rice for export to foreign countries on said basis less said maximum discount. The determination of the Millers Committee as to whether or not clean rice is actually exported

shall be final and conclusive, subject to appeal to the Secretary. Said minimum amounts, below which this section provides that clean rice shall not be offered for sale, sold, or delivered, by a miller, apply f. o. b. the miller's mill.

Sec. 2. The conversion charge per barrel of rough rice shall, until and except as changed by the Secretary, be an amount equal to the sum of (a) seventy (70) cents per barrel of rough rice, (b) nine (9) cents per barrel of rough rice if standard one-hundred pound single packages are used for the clean rice, and (c) if cotton or paper inner linings or regular burlap outer slips are used for the clean rice, an additional five (5) cents per barrel of rough rice, or (d) if any other type of container is used for the clean rice, the actual invoice price for the container used. The Secretary may at any time and from time to time during the effective period, increase or decrease the amount of, and/or change the basis of computation of, the conversion charge."

One of the main purposes, if not actually the main purpose, of the Agricultural Adjustment Act and this license was to increase the price of rough rice paid the farmer, and in order to keep the rough rice price at a higher level, the Secretary attempted by this Section 1 to fix the price that clean rice might be sold at as roughly 79¢ per barrel above the cost of the rough rice. It was extremely important to keep the clean rice up to this level in order to maintain the rough rice price. In the fall of 1934, the Secretary of Agriculture brought proceedings, according to the information and belief of the affiant, against a number of different rice mills in Louisiana and to affiant's knowledge against Bay City Rice Mills of Bay City, Texas, a partnership composed of W. M. Loving and three other partners. The case against the Bay City Mills was case No. 11-1-7, entitled In the Matter of W.

M. Loving, R. Q. Pegram, S. M. Clements and L. D. Clements, Individually and as Co-partners trading under the name Bay City Rice Mills. One of the original charges against the Bay City Rice Mills was Charge No. 11, which charged in general terms that the Mill had sold clean rice for domestic consumption for an amount less than the price fixed for the sale of the clean rice pursuant to this license. This Charge 11 was later made more specific as follows:

"11. That the said Licensee since the effective date of said License has violated Section 1 of Article V of said License as in effect until July 21, 1934, 12:01 A. M. Eastern Standard Time, and Section 1 of Article IV of said License as in effect from July 21, 1934, 12:01 A. M. Eastern Standard Time on, in that said Licensee has offered for sale, sold and delivered, for domestic consumption, quantities of clean rice, to-wit: Clean rice lot numbered 36 on the books of the respondent derived from rough rice lot numbered 33 on the books of the respondent and purchased from C. E. Everitt; clean rice lot numbered 43 on the books of the respondent derived from rough rice lot number 33 on the books of the respondent and purchased from C. E. Everitt; clean rice lot numbered 123 on the books of the respondent derived from rough rice lot numbered 153 on the books of the respondent and purchased from A. P. Powers clean rice lot numbered 124 on the books of the respondent derived from rough rice lot numbered 154 on the books of the respondent and purchased from J. R. Reed; for an amount per pocket less than the price fixed for the sale of such clean rice pursuant to said Section 1 of Article V of said License as in effect up until July 21, 1934, 12:01 A. M. Eastern Standard Time, and pursuant to said Section 1 of Article IV of said License as in effect from July 21, 1934, 12:01 A. M. Eastern Standard Time on."

The affiant, together with Mr. W. E. Davant of Bay City, Texas, represented the Bay City Rice Mills in this hearing before the representatives of the Secretary of Agriculture on these charges, which hearing was held in Houston, Texas, and again on December 27, 1934, and ran through January 2, 1935.

The Bay City Rice Mills in that proceeding took the position, and so advised the Secretary of Agriculture's representatives, that it was utterly impossible, owing to the manner in which the rice industry is conducted, through the sale of clean rice on samples made up of mixes of different lots of clean rice, as more fully set out in the bills of complaint presented to the United States District Court at New Orleans in the processing tax suits, to determine in the case of any lot of rice, whether the clean rice had been sold for 79¢ more than the rough rice had cost, or for the amount above the cost of the clean rice that the Secretary required under Section 1 of Article IV.

The Secretary of Agriculture's representatives had access to all the books, vouchers and records of the Bay City Rice Mills, both in connection with its rough rice purchases and its clean rice sales and had several auditors continuously working on those records. The amount paid for the rough rice purchased from Evoritt, Powers and Reed, as set forth in said Charge II was established. The clean rice derived from the rough rice purchased from these three producers was traced at the hearing into the sales of clean rice into which they entered and the price of clean rice sales was established. However, owing to the fact that each quantity of clean rice that went into a sale was made up of a mixture from various lots of clean rice, which were in turn produced from various lots of rough rice bought from different producers, and owing to the fact that there was, as is usual in the rice business, an almost infinite variation in the combinations of these mixes of clean rice lots, and owing to the fact that rough rice when milled

produces different grades of clean rice, as set forth in the above mentioned bills of complaint, the Secretary of Agriculture was never able to show in that case whether or not the Bay City Rice Mills had obtained for the clean rice derived from the Evoritt, Powers, and Reed rough rice the amount (roughly 79c) above the cost of the rough rice that Article IV, Section 1, attempted to require the mill to get. Although that was one of the charges most vitally affecting the entire rice program in affiant's belief, and although the Secretary of Agriculture through his two attorneys who prosecuted the case and through his several auditors who were continuously working on the records of the Bay City Mills made every effort to prove the charge, the Secretary of Agriculture in his findings did not find that the charge had been proven and did not find that the Bay City Rice Mills had violated the license in the manner set forth in Charge 11.

Affiant believes, and on that belief states, that the reason the Secretary of Agriculture did not find that Charge 11 had been supported by any evidence was because it was utterly impossible practically to show whether clean rice had been sold for the amount above the rough rice cost that the license required.

The charge referred specifically to the sale of clean rice lots 36, 43, 123 and 124. Evidence as to the history of those clean rice lots is as set out below.

The clean rice in each case was included in various sales, each sale being represented by a separate invoice. The history of those clean rice lots was as follows: (As shown by the record in that case.)

Clean Rice Lot 36:

This rice came from rough rice lot 33 from C. E. Everitt. It was mixed with various other lots of rice and went in as a part of the rice sold and represented

by the following 9 invoices: Invoice Nos. 6615, 6622, 6634, 6639, 6645, 6767, 6770, 6771 and T-162 (R. 324-326).

The rice covered by invoice No. 6615 was made up of rice from various lots as follows:

39 pockets from lot 17, fancy
125 pockets from lot 31, fancy
200 pockets from lot 36, fancy
26 pockets from lot 33, heads
26 pockets from lot 31, heads
(R. 472.)

Invoice 6622 consisted of the following:

75 pockets from lot 26, fancy
250 pockets from lot 35, fancy
175 pockets from lot 36, fancy
(R. 475.)

Invoice 6634 consisted of the following:

148 pockets from lot 34 EP
75 pockets from lot 35 EP
75 pockets from lot 36 EP
81 pockets from lot 37 EP
68 pockets from lot 38 EP
150 pockets from lot 43 EP
201 pockets from lot 45 EP.
(R. 478.)

There was no evidence whatsoever as to the different lots going to make up the rice on any of the other invoices heretofore or hereafter referred to, but each invoice represented a mix from various lots.

Clean Rice Lot 43:

This lot went into invoices 6634, 6639, 6644, T-126, T-127, T-128, and P-1006 (R. 327-329). No evidence

was introduced as to the component part of those invoices, except invoice 6634 above set forth, but they all consisted of mixes.

Clean Rice Lot 123:

This rice went into the following invoices:

Invoices Nos. 6832, 6833, T-187, T-188, 6840, T-195, 6839, T-200, 6885, 6886, T-201, T-202, T-187, T-188, and T-182 (R. 329 et seq.). No evidence was introduced as to the lots going into these invoices but they were all mixes.

Clean Rice Lot 124:

Affiant does not have the record at this time as to what invoices this lot went into but it was mixed into a number of mixed invoices.

To have traced the cost of the various lots of clean rice that went into each invoice would have been long involved and in fact practically impossible, and then to trace the cost of all rice going into all invoices into which any one of these clean rice lots went would have involved further and innumerable records and evidence.

This is further illustrated when it is noticed that a large number of rough rice lots and clean rice lots were involved, as, for example, in Charge 11 it referred to rough rice lot as high as No. 154 and clean rice lot as high as No. 124.

No charge was made that Bay City Rice Mills did not keep accurate and complete records of its operations.

Nor was any issue made as to the fact that the selling of rice by samples and mixing rice was usual and customary.

For example, Mr. F. A. Farda, who testified as a witness for the Secretary of Agriculture, and who is the Manager of Standard Rice Company, one of the largest rice milling companies in the United States, testified as follows:

"Mr. Farda:

Well, it is not common practice, in fact, it is not a practice to make a mixture just in order to put it in a warehouse and keep it. You make the mixture when you sell your rice, get ready to sell it, you sell it on a sample and then you make your composite mixture and your lots match your sample. *That is a common practice.*

"Mr. Davant:

Is it not a practice to make up these samples practically in the beginning of the season and to send them out as types?

"Mr. Farda:

The practice is to make hand mixes, and to send them samples, and when you sell on the samples you make your actual mixture, make it up." (R. 420-421.)

* * * *

"Mr. Farda:

The usual practice is, you don't make your mix until you have the rice sold." (R. 429-430.)

* * * *

"Mr. Farda:

You never make a mix until you have a sale made, because it would not be of material ad-

vantage to do so because you may not find another market for that particular blend that you make. *You therefore keep your rice in the original lots* to be in a position to make a blend of whatever the trade or market requires at that time." (R. 430.)

In connection with the above lots of clean rice, the Secretary's attorneys tried to make some allocation of the cost of rough rice to the different grades of clean rice produced as between fancy rice and head rice, but this was realized by all to be purely arbitrary allocation of cost without any real or sound basis for the same.

The above proceeding against Bay City Rice Mills was a proceeding before the Secretary of Agriculture to forfeit the license of Bay City Rice Mills for alleged violation of the license. The hearing was held before a representative of the Secretary of Agriculture.

In the foregoing affidavit the figure of 79c above rough rice cost has been referred to. That, as stated, was used only roughly. Under the license, the price for clean rice was to be the price fixed for rough rice plus the conversion charge plus the carload rail rate for transporting rough rice to the miller's mill plus the administrative assessment of 5c per barrel. The conversion charge was 70c per barrel plus 9c per barrel if standard one hundred pound single packages were used for clean rice plus 5c per barrel if cotton or paper interlinings were used. This would make the spread between the rough rice price and clean rice price approximately 89c exclusive of the freight item.

(Sgd.) HOMER L. BRUCE.

Subscribed and Sworn to before me, the undersigned authority, by Homer L. Bruce, this 27th day of October, 1935.

(Sgd.) RAYMOND REILSON,
(Seal) Notary Public in and for Harris County, Texas.

AFFIDAVIT

State of Louisiana,
Parish of Orleans.

We, L. J. Bartel, R. F. Gould, and J. J. Mayer, each first being duly sworn, deposes and says:

That we are Deputy Collectors of the Treasury Department, Internal Revenue Service, Louisiana District, working in connection with the rice processing tax division, and that the experience of each in the rice industry, prior to becoming Deputy Collectors, is as follows: L. J. Bartel has had actual experience of approximately twenty years in buying rough rice; operation of rice milling plants, and the distribution of milled rice and by-products. R. F. Gould has had actual experience as follows: Fifteen years with the largest rice millers of the industry as Office Manager, and Chief Accountant; one year as Secretary, and auditor of a rough rice buying agency for New Orleans rice mills, and one and one-half years as traveling auditor for the Millers Committee, an agency operating under a Marketing Agreement for the Southern Rice Industry. J. J. Mayer has had approximately seven years actual experience in buying, selling and grading rough rice and distributing milled rice, and by-products. Our broad experience, as above outlined, reveals the following facts as existing in the rice milling industry:

There is no established market price on rough rice, and the method of buying the rough rice by the millers is a competitive bidding method. Each miller has his buyer, who makes the competitive bid on the basis outlined to him by the management of the mill. The basis is as follows: Rice millers determine the price to make their bid to a producer for his rough rice based on the prevailing market price for milled rice

computing the values to the different grades and by-products obtained from the processing of the rough rice being bid upon. *For example:*

A lot (parcel) of rough rice, estimated to produce (per barrel of 162 pounds) the following articles, grades, classes, etc., when processed, with estimated values as set out for each of the respective grades, classes, etc.:

Fancy Head Rice—100 pounds at 4½c	$4.50
Second Head Rice—4 pounds at 3c	.12
Screenings Rice—6 pounds at 2½c	.15
Brewers Rice—2 pounds at 2c	.04
Total yield per barrel—112 pounds.	
Total value	$4.81 plus
Approximate revenue from by-products (25c per barrel of 162 pounds)	.25
Total revenue	$5.06

Competitive bidding basis prior to the processing tax law requiring payment of a processing tax in cash: The above $5.06 is the gross value of milled rice articles and by-products resulting from a 162 pound barrel of rough rice. The mill would deduct from this gross figure the conversion charge, this conversion figure including the mills expense for processing the rough rice, and the estimated profit. Assuming that this conversion would be 60c per barrel, the mill would then bid the producer $5.06, less the 60c conversion, or $4.46 per barrel for the rough rice. The affiants solemnly swear that they have used and seen records of various rice mills establishing the basis as outlined above.

Competitive Bidding Basis after the Processing Tax Law requiring Payment of a Processing Tax in Cash: Since the beginning of the 1933 crop movement, which

become available for market during the month of July, and on which the processing tax applies, the rice millers use the same basis to determine values; however, in addition to deducting the conversion charge, the rice millers deduct also the 1c per pound processing tax on the rough rice, or $1.62 per barrel, and submits his bid to the producer, less this deduction, as follows:

From the value of the same lot of rough rice as above illustrated, estimated to produce milled rice and by-products with gross values of $5.06 per barrel, the rice miller deducts the following: Conversion 60c and processing tax $1.62, or a total of $2.22 per barrel, and makes bid to the producer of $2.84 per barrel for that particular lot of rough rice.

The affiants further solemnly swear that in their practical experience they have prepared, and have seen prepared profit and loss statements for certain given periods other than the entire season; further that these profit and loss statements are prepared on particular lots of rice, which is essential and necessary in their accounting procedure. Should the Agricultural Adjustment Act be held unconstitutional, the affiants state that the rice processors should enjoy the remedy and benefits given by Section 21 (d) of the said Agricultural Adjustment Act, as amended August 27th, 1935, because the records of buying processing and selling kept by the rice mills are adequate enough to properly allocate the cost of various grades of milled rice and its by-products, resulting from the processing of the rough rice; also to properly allocate in this cost, the processing tax, proportionately to the various grades of each lot of milled rice sold by itself alone or mixed. The greater portion of the milled rice sales are straight mill run lots without blending.

The affiants further solemnly swear that they have kept or have seen rice millers' records which reflect correct cost of production, profits from sales, etc., properly allocated to milled rice of various varieties, and grades, and by-products, and similarly allocated as to profits in selling prices, and should the Agricultural Adjustment Act be proven unconstitutional, each rice processor has sufficient records to enable him to recover in accordance with Section 21 (d) of the Agricultural Adjustment Act, as amended.

Summed up, the introduction of the rice processing tax has in no wise altered the customary manner or procedure followed by the rice milling industry in conducting their business.

(Sgd.) L. J. BARTEL,
(Sgd.) R. F. GOULD,
(Sgd.) JAMES J. MAYER.

Subscribed and sworn to before me this 28th day of October, 1935.

(Sgd.) HOMER R. ROBINSON,
Deputy Collector.

DECREE.

Filed October 28, 1935.

(Title Omitted.)

This cause came on today to be heard upon the application of the plaintiff for a preliminary injunction, as well as upon the motion filed on behalf of the

defendant to dismiss the bill of complaint, and was argued by counsel for the respective parties;

Whereupon, and upon consideration thereof, and for the reasons orally assigned;

It is Ordered, Adjudged and Decreed that the application for the Preliminary Injunction be and the same is hereby denied;

It is Further Ordered, Adjudged and Decreed that the plaintiff's petition and bill of complaint in all respects be dismissed.

(Signed) JOHN McDUFFIE, Judge.

New Orleans, Louisiana, October 28, 1935.

MOTION FOR INJUNCTION PENDING APPEAL.

Filed Oct. 29, 1935.

(Title Omitted.)

Comes now the plaintiff in the above entitled and numbered cause and moves the Court to grant plaintiff an injunction pending appeal for the reason that, unless such injunction pending appeal is granted plaintiff, plaintiff will be compelled to pay the taxes referred to in plaintiff's petition before plaintiff's appeal can be determined by the Circuit Court of Appeals, thus causing it great and irreparable injuries. Plaintiff offers to furnish good and sufficient bond by a solvent surety company in an amount to be fixed by

the Court, if the Court should grant its prayer for injunction pending appeal.

BAKER, BOTTS, ANDREWS
& WHARTON,
By JOHN P. BULLINGTON.

Motion denied.
(Signed) JOHN McDUFFIE, Judge.

MOTION OF PLAINTIFF FOR APPEAL AND ORDER ALLOWING SAME.

Filed Oct. 29, 1935.

(Title Omitted.)

On motion of plaintiff in the above cause, and on suggesting to the Court that plaintiff is aggrieved by the decree entered by the Court herein on the 29th day of October, 1935, granting defendant's motion to dismiss, and that plaintiff desires to appeal therefrom with a supersedeas and a stay of proceedings in the District Court, pending appeal to the United States Circuit Court of Appeals for the Fifth Circuit, and

On further suggesting to the Court that said decree is contrary to the law and the evidence for the reasons set forth in the assignment of errors filed in plaintiff's behalf herein; and

On further suggesting to the Court that this motion being filed in open Court on the entry of such decree and in the presence of counsel for defendant, no citation of appeal is necessary or need issue herein;

It is Ordered by the Court that the appeal of plaintiff from the decree entered herein to the United States Circuit Court of Appeals for the Fifth Circuit be and the same is hereby allowed with supersedeas, on appellant's furnishing bond with good and solvent surety, conditioned as required by law and to be approved by the Court in the sum of $250.00 said bond to act as a supersedeas, as well as a bond for costs and damages;

It is Further Ordered by the Court that the appeal of plaintiff from the decree entered herein be made returnable to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, on or before November 27th, 1935, and that a certified copy of the record herein be transmitted to said Court of Appeals by the Clerk of this Court, and that no citation of appeal is necessary or need issue herein.

(Signed) JOHN McDUFFIE, Judge.

ASSIGNMENT OF ERRORS.

Filed October 29, 1935.

(Title Omitted.)

Comes now plaintiff and says that, in the record in the proceedings of the said Court in the above entitled cause and in the decree made and entered therein on the 28th day of October, 1935, there is manifest error and for error the said plaintiff assigns the following:

(1) The Court erred in sustaining defendant's motion to dismiss plaintiff's Bill of Complaint, because such action was contrary to the law and the evidence.

(2) The Court erred in over-ruling and not sustaining plaintiff's motion for a preliminary injunction because said ruling was contrary to the law and the evidence.

Wherefore, plaintiff prays that said Decree be, in all things, reversed, with instructions to the said District Court to grant plaintiff a preliminary injunction.

(Signed) BAKER, BOTTS, ANDREWS & WHARTON,
By JOHN P. BULLINGTON.

APPEAL BOND.

Filed October 29, 1935.

Know all Men by these Presents, that we, A. B. Dore, as principal and The Aetna Casualty and Surety Company, Hartford, Conn., as surety, are held and firmly bound unto Rufus W. Fontenot, in the full sum of $250.00, to be paid to the said Rufus W. Fontenot, his attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents, sealed with our seals and dated this 29th day of October, 1935.

Whereas, lately, in the District Court of the United States for the Eastern District of Louisiana, judgment was rendered against A. B. Dore, and in favor of Rufus W. Fontenot, denying plaintiff's application for a Preliminary Injunction and dismissing plaintiff's Bill of Complaint, and the said A. B. Dore, having obtained an appeal to reverse said judgment, citing and admonishing the said Rufus W. Fontenot to be and appear at a session of the United States Circuit Court of Appeals for the Fifth Circuit to be holden at the City of New Orleans, La., in said Circuit Court on the 27th day of November, 1935.

Now the condition of the above obligation is such that if the said A. B. Dore shall prosecute its appeal to effect and answer all damages and costs, if it fail to make its plea good, then the above obligation to be void, else to remain in full force and effect.

(Signed) A. B. DORE,
By JOHN P. BULLINGTON,
Attorney of record,
Principal.

THE AETNA CASUALTY & SURETY COMPANY,
Surety,
By CARL F. WEISS,
(Seal) Attorney-in-Fact.

Approved, October 29, 1935.

(Signed) RUFUS E. FOSTER, Judge.

PRAECIPE.

Filed October 31, 1935.

(Title Omitted.)

To the Honorable H. J. Carter, Clerk of the United States District Court for the Eastern District of Louisiana:

You will please include in the record upon appeal in the above entitled cause the following documents and procedures:

1. Plaintiff's original bill of complaint.

2. Defendant's motion to dismiss and answer.

3. Order of Court consolidating causes for trial and providing for evidence in cause No. 324 in Equity, Baton Rouge Rice Mill, Inc., vs. Rufus W. Fontenot, etc., to be considered as evidence in this cause.

4. Affidavit of W. M. Reid.

5. Affidavit of Homer L. Bruce.

6. Joint affidavit of L. J. Bartel, R. F. Gould and J. J. Mayer.

7. Decree of the District Court.

8. Plaintiff's motion for injunction pending appeal and order denying same.

9. Motion and order for appeal.

10. Plaintiff's assignment of error.

11. Appeal bond.

12. This Praecipe.

13. Clerk's certificate.

HOMER L. BRUCE,
JOHN P. BULLINGTON,
BAKER, BOTTS, ANDREWS & WHARTON,
By JOHN P. BULLINGTON,
Attorneys for Plaintiff and Appellant.

Approved:
(Sgd.) ROBERT WEINSTEIN,
Asst. U. S. Attorney, Counsel for defendant.

Clerk's Office:

I, HENRY J. CARTER, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 50 pages contain and form a full, true and complete transcript of the record, assignment of errors, and all proceedings in the cause entitled "A. B. Dore, doing business under name of The Dore Rice Mill, vs. Rufus W. Fontenot, Individually and as Collector of Internal Revenue for the District of Louisiana," No. 322 In Equity of the Docket of this Court, as made up in accordance with the praecipe for transcript copied herein.

Witness my Hand and the seal of the said Court at the City of New Orleans, Louisiana, this 2nd day of November, A. D. 1935.

(Seal) H. J. CARTER, Clerk.

By H. W. NIEHUES,
Deputy Clerk.

[fol. 86] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AT NEW ORLEANS, LOUISIANA

No. 7945

A. B. DORE, Doing Business as the Dore Rice Mill,
Appellant,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Appellee

MOTION FOR PRELIMINARY INJUNCTION PENDING APPEAL—
Filed November 4, 1935

Comes A. B. Dore, doing business as The Dore Rice Mill, appellant in the above numbered and entitled cause, and after due notice given to the appellee above named, respectfully states to the Court that the said appellant on the 25th day of October, 1935, brought a bill in equity in the United States District Court for the Eastern District of Louisiana, New Orleans Division, entitled A. B. Dore, doing business as The Dore Rice Mill, plaintiff, v. Rufus W. Fontenot, individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, defendant, and numbered 322 in equity, in the New Orleans Division of said United States District Court. In its bill of complaint in said cause appellant prayed for a temporary re-
[fol. 87] straining order to be issued immediately, and for a preliminary injunction after notice to the appellee, and for a permanent injunction on the final hearing of said cause, enjoining the appellee from assessing or collecting or attempting to assess or collect from the appellant in any manner whatsoever, whether by lien or jeopardy or distraint proceedings, in court or otherwise, any processing taxes levied under and pursuant to the Act of the Congress of the United States known as the Agricultural Adjustment Act and amendments thereto, or purported to be levied by said Act, upon the appellant for the processing of rice during the month of September, 1935, and for subsequent months, and any interest or penalty on account of appel-

lant's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of appellant. That said application for a preliminary injunction was set down for hearing before the Judge of said District Court at New Orleans on Monday, October 28, 1935. The notice thereof was duly waived by the appellee. Prior to said hearing the said appellee filed his motion to dismiss and answer to said bill of complaint, copies of which motion and also of appellant's bill of complaint are contained in the record in this cause filed in this Court.

After a hearing had on appellant's motion for a preliminary injunction and on the said motion to dismiss, the Honorable John McDuffie, acting judge of said District Court on October 28, 1935, refused appellant's motion for a preliminary injunction, granted the motion of the appellee to dismiss the said bill of complaint and dismissed the said bill of complaint, to which appellant herein duly ex-
[fol. 88] cepted. Thereafter, on the 29th day of October, 1935, the appellant herein in open court and in the presence of counsel for appellee filed its petition for an appeal, which was duly allowed by the said judge of the said United States District Court who tried said cause, and filed at the same time its assignments of errors, and also a cost bond was duly filed and approved by the said Judge of said District Court. At the time appellant presented its said petition for appeal, it also petitioned said judge of the District Court to grant it an injunction enjoining the appellee in the manner set out in its request for a preliminary injunction in its bill of complaint, pending the appeal of appellant to this Honorable Court, but the said judge of said District Court on October 29, 1935, refused appellant's said petition and refused to grant appellant said injunction pending said appeal.

Appellant has therefore perfected its appeal to the Circuit Court of Appeals for the Fifth Circuit, making said cause returnable at New Orleans, Louisiana, as provided by law. Appellant has duly caused to be prepared a transcript of the record in said cause and has filed the same, in accordance with law, and within the time allowed by law, in the Clerk's office in the Circuit Court of Appeals at New Orleans, Louisiana.

In said bill of complaint appellant alleged that the amount of processing taxes on account of the rice processed by the appellant during the month of September, 1935, was $18,546.65, and that under said Agricultural Adjustment Act appellant was required to pay said amount to appellee on or before October 30, 1935, and that appellee was [fol. 89] charged with the duty of collecting said tax, and if said tax were not paid on or before October 30, 1935, appellee would assess said tax against the appellant and serve upon appellant notice and demand for the payment thereof and would allow appellant ten days from receipt of such notice within which to pay the same; that in the event said tax should not be paid within said time, appellee would assess against appellant a penalty equal to 5% of the amount of the tax and interest on the tax at the rate of 1% per month from the due date of the tax until paid; that if the appellant failed to pay the tax within said ten days, appellee would proceed to collect the tax, penalty and interest by filing a notice of lien on all of appellant's property and distraining upon and selling such of appellant's property as might be necessary to realize the amount of said tax, penalties and interest; and that additional processing taxes for months subsequent to September, 1935, will accrue and be assessed against and collected from the appellant in the same manner as the tax for the month of September.

Appellant alleged that the said processing tax was illegal and unconstitutional, and violated various provisions of the Constitution of the United States in many particulars, more fully set forth in appellant's bill of complaint. The appellant also alleged that under an amendment to said Agricultural Adjustment Act approved on August 24, 1935, a Section 21 (d) was added to said Act, which section provides in substance that appellant should be allowed no recovery of any of said taxes paid, if the same should be illegal or unauthorized, unless appellant established to the satisfaction of the Commissioner of Internal Revenue, and the [fol. 90] Commissioner should so find, that neither appellant nor any person directly or indirectly under appellant's control or having control over appellant, has, directly or indirectly, included such amount in the price of the rice with respect to which it was imposed or of any article proc-

essed from the rice with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing rice, and that the price paid by the appellant or such person for said rice was not reduced by any part of such amount. Appellant in said bill of complaint, alleged, as more fully set out in said bill of complaint, that under said Section 21 (d) it had no adequate remedy at law by which it could recover any part of said taxes if same were unconstitutional and illegal, and that it was impossible, owing to the peculiar conditions existing in the rice milling industry and in the purchase, milling and sale of rice, for appellant to discharge the burden placed upon it by said Section 21 (d), all as more fully set out in appellant's bill of complaint.

Appellant further alleged that in said amendment of August 24, 1935, a new section known as Section 21 (a) was added to said Agricultural Adjustment Act, which in substance provided that no suit to enjoin the collection of said processing taxes should be maintained in any court. Appellant further alleged that said section was not intended to apply, and did not apply, to the injunction prayed for by appellant, inasmuch as appellant had no adequate remedy at law. Appellant further alleged that if said section should be interpreted as prohibiting the injunction prayed for by appellant, then the said section, together with [fol. 91] the other provisions of said Act, was invalid and in violation of the Fifth Amendment to the Constitution, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes would be collected from appellant and appellant would have no remedy by which he could recover taxes and would have no remedy to prevent the collection of said unlawful taxes and would be forever deprived of the right to test the constitutionality of said taxes.

Appellant further alleged that said Section 21 (d) denied the appellant a complete and adequate remedy at law for the various other reasons set forth in said bill of complaint.

At the hearing before the District Judge appellant introduced in evidence the affidavit of W. M. Reid, Executive Secretary of The Rice Millers Association, a man of twenty-six years experience in the rice business, in which affidavit

he set out fully and in detail the methods of conducting the rice business and the manner in which the rough rice market and the clean rice market is made, showing that it would be utterly impossible for any rice miller to accurately determine whether he had made a profit or a loss on any given transaction, much less prove whether he had passed the tax, or any part thereof, on. Appellant also introduced in evidence the affidavit of Homer L. Bruce, a practicing attorney at the bar at Houston, Texas, setting out in detail the proceedings under a complaint brought by the Secretary of Agriculture to revoke the license of a rice mill under the Act in effect prior to the present Act. The Secretary of Agriculture sought to revoke the license of [fol. 92] this mill for failure to sell clean rice and rice products processed from rough rice at a price approximately 79¢ higher than the price paid for the rough rice. The affidavit showed that although the Government was able to prove the cost of the rough rice and to trace the particular rough rice into various "mixes" of clean rice and the price procured for these "mixes" of clean rice it was never able to prove that the price procured for the clean rice processed from the particular lot of rough rice was not 79¢ more than the price paid for the rough rice because of the fact that clean rice is customarily sold in "mixes" of various lots of rice and there was no way to allocate the price procured for the mixed rice sold to the various lots of rough rice which went into the mix.

In the meantime, appellant alleges that for the foregoing reasons and those set forth in its said bill of complaint in said cause, and because the judge of said court in his said order dismissed said bill of complaint and refused to grant appellant the injunction prayed for pending the appeal in this case, the appellee herein will, to the irreparable damage and loss of the appellant herein, proceed to collect the said taxes for September, 1935, which are now due and unpaid, from appellant, and said taxes for subsequent months, unless restrained by a preliminary injunction granted by this court. The appellant alleges that not only has it no complete remedy at law, but in fact no remedy at law at all, for the reasons hereinabove set forth and set forth more in detail in said bill of complaint, that it is faced with the alternative of paying the tax with the certainty that no remedy at law exists for its recovery in case it be

held that it was unconstitutionally assessed, or of refusing [fol. 93] to pay and running the risk of becoming liable for the heavy civil and criminal penalties provided in the Act, and that the said judge of said District Court should not have dismissed said bill of complaint, but should have overruled the same, and upon the hearing should have granted the preliminary injunction as prayed for in said bill of complaint.

Appellant would further show that there is now pending in the Supreme Court of the United States a case involving the constitutionality of the said Agricultural Adjustment Act, being the same case in which the Circuit Court of Appeals for the First Circuit declared the Act to be unconstitutional, and that the Supreme Court, according to press dispatches, has set said cause for oral argument on Monday, December 9, 1935; that a decision by the Supreme Court of the United States upon the validity of the said Act may be expected within a reasonable time thereafter; that the first benefit payment to farmers provided for in said Act has been made, and that under the standard form of contract between the Secretary of Agriculture and rice farmers no further payment is due until such time after December 1, 1935, as the Secretary shall determine and declare what further amount of benefit payments shall be made and when they shall be made; that the taxes to be collected under said Act are for the purpose of making these benefit payments and that since the Secretary of Agriculture need make no further benefit payments until such time after December 1, 1935, as may be fixed by him, the delay of the Government in collecting these taxes which might be occasioned by the granting of the injunction prayed for [fol. 94] herein will not occasion an injury to the Government nor will it unduly interfere with the achievement of the program set out in said Act if the Act be held constitutional. On the other hand, as hereinabove alleged, great and irreparable damage will be done to plaintiff in the event the law is held unconstitutional unless the injunction hereinafter prayed for is granted.

Appellant further shows that unless an injunction pending appeal be granted so as to preserve the status quo, the subject-matter of the suit will be lost and the jurisdiction of this Honorable Court defeated. Such injunction is necessary to preserve the jurisdiction of this Honorable

Court, and in order that appellant may enjoy the just fruits of a favorable decision on this appeal.

The appellant states that it is ready and willing to give any reasonable bond or other security that may be required by any order of this Court, including the deposit from month to month of the amount of tax due, in a depository to be designated by the court, and therefore prays that this Court make an order granting appellant a preliminary injunction enjoining and restraining the appellee from assessing or collecting or attempting to assess or collect from appellant in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in court or otherwise, the said processing taxes for the month of September and subsequent months and any other processing taxes under and pursuant to said Agricultural Adjustment Act upon rice processed by appellant, and any interest or penalty on account of appellant's failure to pay said processing taxes, and from imposing or giving notice of intention to impose [fol. 95] any lien for said taxes upon the property, real or personal, of the appellant, pending the hearing of appellant's appeal in this case and upon such conditions and terms as to this Court may seem just.

Homer L. Bruce. John P. Bullington. Baker, Botts, Andrews & Wharton, of Counsel.

[fol. 96] *Duly sworn to by John P. Bullington. Jurat omitted in printing.*

[fol. 97] In United States Circuit Court of Appeals

No. 7945

A. B. Dore, Doing Business under the name of Dore Rice Mill,

versus

Rufus W. Fontenot, Acting Collector of Internal Revenue

Order Denying Motion for Preliminary Injunction Pending Appeal—November 5, 1935

Upon the authority of Rickert Rice Milling Company, Inc., vs. Rufus W. Fontenot, etc., the application for injunction in the above numbered and entitled case is denied.

[fol. 98] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7937

RICKERT RICE MILLING COMPANY, INC., Appellant,

versus

RUFUS W. FONTENOT, Acting Collector of Internal Revenue, Appellee

Appeal from the District Court of the United States for the Eastern District of Louisiana

Motion for Preliminary Injunction Pending Appeal

Before Foster and Sibley, Circuit Judges, and Strum, District Judge

OPINION—November 5, 1935

By the COURT:

On consideration of the application for an injunction to stay collection of taxes levied under the provisions of the Agricultural Adjustment Act, as amended by the Act of August 24, 1935, the Court is of the opinion that the taxpayer has a remedy at law to recover back any taxes il-
[fol. 99] legally exacted and, further, that the provisions of the Act as amended deprive the Court of jurisdiction to grant injunctive relief.

It is ordered that the application be denied.

[fol. 100] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 101] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 25, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is

granted, and the case is assigned for argument on Monday, December 16, next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 40,132. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 578. A. B. Dore, petitioner, vs. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana. Petition for a writ of certiorari and exhibit thereto. Filed November 11, 1935. Term No. 578, O. T., 1935.

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 579

UNITED RICE MILLING PRODUCTS CO., INC.,
PETITIONER,

vs.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 11, 1935.

CERTIORARI GRANTED NOVEMBER 25, 1935.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 579

UNITED RICE MILLING PRODUCTS CO., INC.,
PETITIONER,

vs.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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UNITED STATES OF AMERICA.

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

No. 323 (In Equity).

UNITED RICE MILLING PRODUCTS CO.

versus

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA.

Appearances:

Messrs. Baker, Botts, Andrews & Wharton, John P. Bullington, Attorneys for United Rice Milling Products Co., Plaintiff-Appellant.

Rene A. Viosca, Esq., United States Attorney and Robert Weinstein, Asst. U. S. Attorney, appearing on behalf of Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Defendant-Appellee.

APPEAL from the District Court of the United States for the Eastern District of Louisiana, to the United States Circuit Court of Appeals for the Fifth Circuit, returnable within thirty (30) days from the 29th day of October, 1935, at the City of New Orleans, Louisiana.

TRANSCRIPT OF RECORD.

BILL OF COMPLAINT & EXHIBITS ANNEXED.

Filed Oct. 25, 1935.

In the District Court of the United States, Eastern District of Louisiana, New Orleans Division.

United Rice Milling Products Co.

vs. No. 323 (In Equity).

Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana.

To the Honorable Wayne G. Borah, Judge of the United States District Court, for the Eastern District of Louisiana:

Comes now United Rice Milling Products Co. hereinafter referred to as plaintiff and in the neuter singular, complaining of Rufus W. Fontenot, individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, hereinafter called defendant, and for cause of action shows to the Court as follows:

1.

Plaintiff is a corporation organized under the laws of the State of Louisiana, with its principal office and domicile at New Orleans, in Orleans Parish, Louisiana. The defendant is a citizen of the State of Louisiana residing at New Orleans, Louisiana, and is the duly appointed, commissioned, qualified and Acting United States Collector of Internal Revenue for the State of Louisiana.

2.

The grounds of jurisdiction of this Court in this case are that this is a suit arising under the Constitution of the United States and the laws of the United States, in of the United States and the laws of the United States, in which the matters in controversy exceed Three Thousand Dollars ($3,000.00), and this suit is also one in which an injunction is sought against an official of the United States to prevent him from unlawfully collecting processing taxes levied by the United States pursuant to certain acts of Congress, more fully set out hereinafter, and to have declared invalid and unconstitutional said acts of Congress in so far as they attempt to provide for the levy, assessment and collection of said processing tax.

3.

Plaintiff is engaged in the business of milling rice and owns and operates a rice mill at New Orleans, Louisiana. The milling of said rice, which constitutes processing of said rice under the terms of the Agricultural Adjustment Act, hereinafter referred to, is done wholly within said State and is a matter of intrastate commerce exclusively, being performed in its entirety within the limits of said State wherein plaintiff's rice mill is established and operated.

4.

There was adopted by the 73rd Congress and approved on May 12, 1933, an Act, P. L. No. 10, popularly known as the "Agricultural Adjustment Act," but officially entitled:

"An Act to relieve the existing national Economic emergency by increasing agricultural purchasing power,

to raise revenue for extraordinary expenses incurred by reason of the emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint stock land banks, and for other purposes."

and said Act with its amendments, for convenience hereinafter, will be referred to by its popular title, namely, the Agricultural Adjustment Act.

Said Agricultural Adjustment Act has been amended several times and particularly by an amendment approved August 24, 1935, which amendment is hereinafter referred to as the Amendment of August 24, 1935.

5.

The policy to be effectuated by the enactment of said Act, prior to the Amendment of August 24, 1935, was declared by Congress in Section 2 to be as follows:

"It is hereby declared to be the policy of Congress—

(1) To establish and maintain such balance between the production and consumption of argicultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. The base period in the case of all agricultural commodities except tobacco shall be the prewar period, August 1909-July 1914. In the case of tobacco, the base period shall be the postwar period, August 1919-July 1929.

(2) To approach such equality of purchasing power by gradual correction of the present inequalities there-

in at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets.

(3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the prewar period, August 1909-July 1914."

By said Amendment of August 24, 1935, Subsection (1) of said Section 2 was amended by inserting at the beginning thereof the words

"Through the exercise of the powers conferred upon the Secretary of Agriculture under this title."

and Subsections (2) and (3) were stricken out and the following inserted in lieu thereof:

"(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section."

Plaintiff alleges that under no provision of the Constitution of the United States is the Congress of the United States authorized to provide for said processing taxes for the purpose of accomplishing any of

said policies above set forth, and the levy, assessment and collection of said taxes have been provided for in said Act, not for the purpose of raising revenue, but for the purpose of accomplishing the things set out in said declaration of policy of Congress and for said reasons the levy, assessment and collection of said taxes are wholly illegal, unlawful and unwarranted under the Constitution of the United States.

6.

Section 8 of said Agricultural Adjustment Act provides in substance that, in order to effectuate the declared policy of the Act, the Secretary of Agriculture shall have power to provide for a reduction and adjustment in the acreage and production for market, or both, of any basic agricultural commodity, including rice, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith, in such amounts as the Secretary finds best calculated to effectuate the declared policy of the Act, to be paid out of the moneys hereinafter referred to.

Section 9(a) of said Agricultural Adjustment Act levies the processing taxes thereinafter provided. It then provides that when the Secretary of Agriculture determines that any one or more payments (including said rental or benefit payments) authorized to be made under Section 8 of said Act or to be made with respect to any basic agricultural commodity, he shall proclaim such determination and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation. Said Act, however, provided that with respect to rice the processing tax for the period from April 1, 1935, to July 31, 1936, should be at the rate of 1c

per pound of rough rice. Under a similar provision of said Act before being amended by the Amendment of August 24, 1935, the Secretary was directed to proclaim, and did proclaim, before April 1, 1935, that rental or benefit payments would be made, with respect to rice and the processing tax of 1c per pound of rough rice would be in effect on and after April 1, 1935.

Section 9(b) of said Agricultural Adjustment Act provides that the processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, as those terms are defined in the Act, plus such percentage of such difference, not to exceed 20 per centum, as the Secretary may determine will result in the collection in any marketing year of an amount of tax equal to (A) the amount of credits or refunds which he estimates will be allowed during such period with respect to the commodity and (B) the amount of the tax which he estimates would have been collected during such period upon all processings of such commodity exempt from tax because such processings are done by or for a State or a political subdivision or an institution thereof, except that the processing tax on rice for the period above mentioned should be at the rate of 1c per pound of rough rice.

Section 12(a) of said Act, prior to the Amendment of August 24, 1935, appropriated the sum of $100,000,000.00 to be available to the Secretary of Agriculture for administrative expenses under Title 1 of said Act and for rental and benefit payments made with respect to reduction in acreage or reduction in production for market under Part 2 of said Title 1. Section 12(a) of said Act, after said amendment, appropriated the said sum of $100,000,000.00 to the Secretary for administrative expenses under Title 1

and for payments authorized to be made under Section 8, including said rental and benefit payments made with respect to adjustment and reduction in acreage or production for market of basic agricultural commodities, including rice.

Section 12(b) of said Act, prior to said Amendment of August 24, 1935, provided that, in addition to said $100,000,000.00, the proceeds derived from all processing taxes imposed under said Title 1 were appropriated to be available to the Secretary of Agriculture for expansion of markets and removal of surplus agricultural products and administrative expenses, rental and benefit payments, and refunds on taxes. Section 12 (b) of said Act as amended by said Amendment of August 24, 1935, provided that, in addition to said $100,000,000.00 a further sum was appropriated to be available to the Secretary of Agriculture for payments authorized to be made under said Section 8, including said rental and benefit payments, said sum so appropriated to be equal to the proceeds derived from all processing taxes imposed under said Act.

7.

Acting pursuant to the purported authority given to him under said Agricultural Adjustment Act, the Secretary of Agriculture under date of April 18, 1935, through R. G. Tugwell, the then acting Secretary of Agriculture, promulgated certain rulings relating to the 1935 Southern Rice Production Adjustment Program, a copy of which rulings is attached hereto as Exhibit A and made a part hereof as if fully copied herein at this point. Under said rulings the Secretary of Agriculture allotted acreage to be planted in rice and barrels of rice to be produced. (a barrel being defined as being one hundred sixty-two pounds of rough rice)

in the States of Arkansas, Louisiana and Texas as follows:

	Acres.	Barrels.
Arkansas	135,000	1,834,722
Louisiana	364,500	3,898,333
Texas	142,500	2,010,833

Said rulings provided for a State Committee appointed by the Secretary of Agriculture for each State and for various forms and applications to be filled out by those desiring to produce rice and to be filed with the said State Committee. Said rulings provided that the base period for Texas should be the years 1931 to 1933, inclusive, and for Arkansas and Louisiana should be the years 1929 to 1933, inclusive. Said rulings further provided that the said State Committee should make an allotment to a producer applying to the Secretary of Agriculture through said State Committee for permission to grow rice during the year 1935, by taking the average acreage planted by such producer during the base period applicable to him and by reducing this result by 20% in Arkansas and in Louisiana and by 22% in Texas; and should give an allotment or permission to said producer to plant said 80% (in the case of Arkansas and Louisiana) or 78% (in the case of Texas) of the average acreage planted by him during said base period. Said rulings further provided for said State Committee to allot to each such producer a quota of barrels of rice that he might produce during the year 1935 by allotting to him 80% (if in Arkansas or Louisiana) or 78% (if in Texas) of the average number of barrels of rice raised by him during said base period.

If a producer had produced rice during any of the years constituting his base period, he was eligible to obtain an allotment and a quota from said State Committee, and if he should obtain such allotment and

quota, he was then eligible to execute a contract with the Secretary of Agriculture in the form shown by Exhibit B attached hereto and made a part hereof for all purposes as if copied in full at this point. If said producer executed said contract and it was accepted by the Secretary, he was then eligible for the benefit payments to be made by the Secretary as provided for in said agreement. However, if a producer had not produced rice during any of the years constituting his base period, he was not eligible to execute said contract with the Secretary and was not eligible for the benefit payments provided for therein. Likewise, if a producer did not execute such contract, or if he executed such contract and it was not accepted by the Secretary, he was not eligible for the benefit payments as provided for therein.

Plaintiff alleges that said processing taxes were not levied under the taxing power of the United States and for the purpose of raising revenue, but were levied for the purpose of raising money with which the Secretary of Agriculture could make rental or benefit payments to producers of agricultural products, including rice, and for the purpose of controlling, regulating, and reducing the amount of acreage that would be planted to rice and the amount of rice that would be grown, and to accomplish the purposes set out in Section 2 of said Act, and that the Congress of the United States had no authority under the Constitution of the United States to levy said processing taxes for said purpose and for said objects.

8.

Section 8 further provides that, in order to effectuate the declared policy of the Act, the Secretary is empowered to provide for a reduction in acreage or a reduction in production of any

basic agricultural commodity through agreements with producers, and to provide for rental or benefit payments in connection therewith in such amounts as the Secretary deems fair and reasonable, but there is no standard or measure established or provided in said Act by which the said Secretary shall be guided in providing for said reduction in acreage or production or in the amount of the rental or benefit payments, and said provisions are wholly invalid and violative of Article 1 of the Constitution of the United States which vests all of the legislative power in the Congress of the United States and is an invalid and unconstitutional delegation of legislative power by Congress to the Secretary of Agriculture.

Plaintiff further alleges that the Secretary has made no findings whatsoever, and if he has made any such findings, they are wholly insufficient to support his action in providing said method of reduction of acreage and production of rice as above set forth, and his said regulations and provisions concerning said reduction of acreage and reduction of production and amounts of benefit payments are wholly arbitrary and unsupported by any findings, or at least any sufficient findings, by the Secretary of Agriculture and are not authorized by said Act or the Constitution of the United States.

9.

Section 9(b) of said Act provides that if the Secretary of Agriculture has reason to believe that the processing tax levied on any commodity will cause such reduction in the quantity of such production domestically consumed as to result in the accumulation of surplus stock thereof or in the depreciation of the farm price of the commodity, then he shall cause an investigation to be made on due notice and opportunity for hearing to interested parties, and if thereupon the

Secretary finds that such result will occur, then the processing tax on such commodity shall be at such rate as will prevent such accumulation of surplus stock and depreciation of said farm price. Said provision applies to the processing tax levied upon rice. Said provision sets no proper standard by which the Secretary shall be guided in determining the rate of the processing tax on rice or how long said tax of one cent (1c) per pound shall remain on rice, and the continuation of said processing tax being dependent upon said action by the Secretary, said provision is an unconstitutional delegation of legislative power to the Secretary of Agriculture in violation of Article 1 of said Constitution vesting the legislative power in the Congress, and for said reasons the said Act in levying said processing tax is void and illegal.

10.

In addition to the foregoing reasons, the said Agricultural Adjustment Act and its provisions for the levying, assessment and collection of said processing taxes upon rice processed by this plaintiff are void, illegal and in violation of the Constitution of the United States for the following reasons:

1. They are an attempt and effort by the United States to regulate, control and reduce the production of certain agricultural commodities specified in said Act, including rice. The so-called processing taxes imposed by said Act are an integral part of the scheme, attempt and effort of regulating, controlling and reducing the production of such commodities, which attempt, effort and scheme is not within the scope of any of the powers vested in the Congress by the Constitution, and if said power exists as a governmental function, it is therefore within the powers reserved to the States as expressly provided by the Tenth Amendment to the Constitution.

2. The so-called processing taxes were not imposed under or in conformity with the power vested in the Congress by Section 8 of Article 1 of the Constitution to levy and collect taxes, duties, imposts and excises, in that they are not imposed to pay the debts or to provide for the common defense or the general welfare of the United States, but were imposed for the benefit of a particular class of individuals, namely, the producers of the various agricultural commodities specified in said Act who conform to the conditions laid down in said Act.

3. The said Act and provisions for the levy, assessment and collection of said processing taxes violates the provisions of the Fifth Amendment to the Constitution since the so-called processing taxes constitute the deprivation of the property of one class of citizens, including the plaintiff, namely, processors of said specified commodities, including rice, without due process of law, in that such processing taxes constitute the taking of the property of this class of citizens, including the plaintiff, not for a public purpose but for a private purpose, to-wit, the payment of gratuities or bounties or benefit payments to another class of persons, namely, the producers of the designated agricultural commodities, including rice, and particularly since this taking is without just compensation to the plaintiff and said processors.

4. Said so-called processing taxes levied by the Act are taxes in name only and not in fact. They constitute merely an exactment and imposition by the Government for the purpose, not of raising revenue for the support of the government, but of raising the price for farm products and adjusting farm income and for carrying out the policy of said Act as hereinabove set forth and for the purpose of enabling the government to carry out and effectuate the said attempt, effort and scheme of the United States as hereinabove set out.

5. Under the terms of Article 1, Section 1, of the Constitution of the United States, the legislative powers granted to the Federal Government are vested in the Congress; whereas, the said Act purports to vest powers in the Secretary of Agriculture, who alone is to determine, at his own discretion and without any definite standard fixed by Congress, the method of bringing about a reduction or adjustment in acreage and production of agricultural commodities, including rice; to provide for rental or benefit payments in connection therewith in such amounts as the Secretary may deem fair and reasonable; to determine how long the said tax of 1c per pound upon the processing of rice shall remain in effect, and if the Secretary changes said rate, what rate shall be fixed. In said respects the said Act involves an invalid delegation to the Secretary of Agriculture by Congress of powers vested exclusively in it by the Constitution and because of said things the said Act delegates said legislative powers to the Secretary of Agriculture and said powers are conferred exclusively on Congress by said Article 1, Section 1; Article 1, Section 8, clause 18; Article 11, Section 1; Article 1, Section 7, clause 1; and Article 1, Section 9, clause 7 of the Constitution.

6. The said taxes, if construed as direct, violate Article 1, Section 9, clause 4, and Article 1, Section 2, clause 3 of the Constitution, because not apportioned according to population.

7. The said taxes are not excise taxes, and are not uniform throughout the United States as required by Article 1, Section 8, clause 1.

8. The said alleged taxes cannot be levied under Article 1, Section 8, clause 3, regulating commerce, because neither the production nor processing of commodities, including the processing of rice done by plaintiff, is in interstate commerce and cannot be regulated

by Congress and in so far as this plaintiff is concerned, its processing of said rice is not interstate commerce and cannot be regulated by Congress.

11.

Under the terms of said Act and orders of the Secretary of Agriculture and the Secretary of the Treasury, the plaintiff is required to file returns with the defendant on or before the 30th day of October, 1935, showing the amount of rice processed by the plaintiff during the month of September, 1935, and the amount of said so-called processing tax on account of said rice processed by the plaintiff during said month, and plaintiff is required to pay said amount to the defendant on or before October 30, 1935. The amount of said processing taxes on account of the rice processed by the plaintiff during said month of September is $31,839.40. The defendant as said Collector of Internal Revenue is charged with the duty of collecting said tax, and if the plaintiff does not make said payment on or before October 30, 1935, the said defendant will assess said tax against the plaintiff and will serve upon the plaintiff notice and demand for the payment of said tax, and the plaintiff will be allowed ten days from the receipt of such notice and demand within which to pay said tax. In the event of failure to pay said tax within said time, the defendant will assess against the plaintiff a penalty equal to 5 per centum of the amount of the tax and interest on the tax at the rate of 1 per centum from the due date of the tax until it is paid; if plaintiff fails to pay said tax within the ten days after receipt of said notice and demand, the defendant will proceed to collect the tax, penalty and interest by filing a notice of lien upon all of plaintiff's property, and by distraining upon and selling such of plaintiff's property as may be necessary in order to realize the amount of said tax, penalties and interest. Additional processing taxes for the months sub-

sequent to September, 1935, will accrue and will be assessed against and collected from plaintiff, just as the processing tax for the month of September will be, in the manner described, unless the defendant is restrained and enjoined from assessing and collecting said taxes. Plaintiff has its rice mill at the place stated in paragraph 3 hereof with a large inventory of rough rice and clean rice, bank accounts and cash on hand. Repeated levies upon and distraint of its property from month to month will cause plaintiff irreparable injury and damage, in that such levies and distraints will impair the valuable good-will of its business; will seriously interfere with, if not prevent, the actual operations of its plant and the sales of its product; and will result in a permanent injury to its business and good-will. Furthermore the tax, if once paid by plaintiff, will be irretrievably lost to plaintiff, to its great and irreparable injury.

12.

Plaintiff further shows that by the Amendment of August 24, 1935, Section 30, of said amendment added a new section to the Agricultural Adjustment Act designated as Section 21, a copy of which Section 21 is attached hereto and marked Exhibit C. Plaintiff does not have an adequate and complete remedy at law as to taxes levied and assessed under said Act because of the provisions of Section 21(d) of said Agricultural Adjustment Act. Under Section 21(d) a recovery will not be allowed to the plaintiff for any amount of the tax paid by plaintiff unless it shall be established that the plaintiff has not directly or indirectly included such amount in the price of the rice with respect to which it was imposed or passed on any part of any such amount to the vendee, or included any part of such amount in the charge or fee for processing, and that the price paid by the plaintiff for rough rice was not reduced by any part of such amount.

Plaintiff states that it is an impossibility to prove or attempt to prove what portion, if any, of the processing taxes paid by it has been either deducted from the purchase price of rough rice or added to the selling price of clean rice for the following reasons:

Rice millers buy rough rice at the market price, a price that is established by the competitive bidding of the many rice millers. Rough rice is bought in large quantities and kept on an average of several months before the clean rice made from it is sold, and because of said facts the miller has no way of definitely knowing at the time of the purchase of rough rice whether he will make a profit or loss on the milling and selling of rice. A major factor in determining the market price of rough rice is the market price of clean rice at the time the rough rice is bought but there is no assurance, however, that the market price for clean rice will be the same at the time the miller actually sells the clean rice milled from the rough rice.

The miller who buys rough rice must pay the market price as established under these conditions, and has no power to fix or make the market price himself. Having no power to make prices, he cannot arbitrarily depress the market price of rice in order to pass the processing tax back to the producer.

Likewise, the miller sells the clean rice in competition with many other rice millers, and also in competition with many other food products, such as wheat, potatoes, beans and other food products, that can be substituted for rice. Under such circumstances, if the price of clean rice is pushed too high, consumers will shift to other products with the result that the demand for rice will decline until the price of rice falls to where people will buy it instead of other competitive commodities. Under these circumstances the rice miller cannot fix or make

the price for clean rice, and cannot arbitrarily increase the price of clean rice in order to pass the processing tax on to the purchaser of clean rice.

In addition, rough rice when milled produces many grades of rice and products thereof. It produces extra fancy head rice, fancy head rice, head rice, second head rice, screenings, brewers, polish, bran, and hulls, all of which commodities have varying values, extra fancy rice being the most valuable and the other grades being of less value in the order above set forth. Extra fancy, fancy, head and second head rice are generally sold for human consumption as rice. Screenings are sold to some extent for direct consumption by human beings. Brewers and screenings are a very low priced commodity and are used in general by breweries. Polish, bran and hulls are sold generally for stock feed. Some of such products, particularly brewers, polish, bran and hulls are sold practically always for a less price per pound than is paid for the rough rice per pound. There is no definite proportion by which the price paid for rough rice can be allocated in any way to these different grades of rice, so that it is impossible to tell with any degree of accuracy how much the rice and rice products that have been produced from any particular lot of rough rice have cost, making it impossible to tell what amount of the processing tax, if any, has been passed on to the purchaser of these articles.

Furthermore, the processing tax is levied upon the first processing of the rough rice and must be paid by the end of the calendar month following the month in which the processing occurred. On the other hand, when a lot of rough rice has been processed in any month, some of the grades may be sold immediately, whereas some of the other grades produced from said rice may be kept for several months before being sold, and it is thus impossible to tell how much has been

received for the clean rice and its products that are produced from any month's processing, and it is impossible to tell how much, if any, of said processing tax has been passed on to the purchaser of said clean rice.

Indeed, it is impossible even to determine whether, for any given month, the mill operations have resulted in a gain or loss and it is only at the end of the season that a gain or loss *for the season* can be determined.

In addition, in the cost of rough rice processed during any month, there is an additional item of the cost of the milling of such rice. The cost of milling rice depends upon many factors so that it is impossible to determine what has actually been the cost of milling any particular lot of rice. There are many varieties of rice, some of which have longer grains than others. Different processes of milling must be used for each different kind and variety of rice, and where the plaintiff and other millers have on hand varied and sundry varieties and kinds of rice it is necessary in the operation of the mill to change quickly from one kind of rice to another as the milling of one lot of rice is completed and the milling of another kind begun. In addition, lots of rice of the same variety will vary the one from the other due to the varying amounts of moisture in the rice, varying conditions under which the rice was harvested, and many other factors, which makes it necessary to vary the operation of the rice mill in many respects as between lots of rice. In addition, the output of a mill in barrels per day varies because of all these factors very considerably. Under all the circumstances, it is impossible for a mill to determine the cost to it of the milling of any particular lot of rice, which cost must necessarily enter into a deter-

mination of whether in selling the clean rice it has included any part, or what part, of the processing tax in the price for which it sells its clean rice and rice products.

In addition, owing to the peculiar nature of the rice business and the customary manner of selling rice that prevails in the rice industry, it is impossible for the plaintiff and other rice millers to determine the cost of any particular rice that has gone into the clean rice that is covered by any particular sale. The clean rice that is obtained from any particular lot of rough rice is not sold in the trade by itself alone. At the beginning of the season plaintiff and other rice mills know approximately the different kinds of rice that they will have during the season. In the early part of the season and as the season progresses, plaintiff and other millers make up samples of rice of the kind that they have determined they will be able to supply during the season. Owing to the varied character of clean rice out-turn from rough rice, these samples are made up of mixtures of different kinds of rice. It has been found impossible to make up such samples entirely of one kind of rice from one lot of rough rice as it is impossible to match in any appreciable quantity a sample of one lot of clean rice with another lot of clean rice. Clean rice is sold on these samples and when an order is obtained for a given amount of clean rice of a certain sample, the plaintiff and other rice millers then find what different lots of clean rice they have on hand which by mixing will produce the samples upon which the sale has been made. As a result, when a sale of clean rice is made, the order is filled by a mixture of clean rice which is made up from many different lots of clean rice. These different lots of clean rice have been milled from different lots of rough rice for which different prices have been paid. As a result the rice that goes into a clean

rice sale has come from many different sources and has been milled under many different conditions and it is impossible to tell exactly the cost of such clean rice under the circumstances. In addition, part of the clean rice obtained from a lot of rough rice may be carried for many months and mixed on different sales with innumerable combinations of other lots of clean rice so that it is impossible to trace through the history of rice processed during any month to determine what price was obtained for it, whether it was sold at a profit or a loss, and what part, if any, of the processing tax has been passed on to the purchaser.

Furthermore, there is no way in which the cost of a lot of rough rice can be allocated between the various grades of rice and the various rice products produced from such lot except by speculation for the use of arbitraries.

In short, it is impossible to determine, statistically or otherwise, where the ultimate burden of the processing tax falls—how much of it is paid by the consumer, how much by the producer, or how much by the processor.

In view of the above facts, the purported remedy given by Section 21(d) of said Agricultural Adjustment Act is wholly inadequate and is in fact a statutory denial of any legal remedy at all.

13.

In addition, the conditions imposed upon the right of the plaintiff to recover taxes paid by it must, under Section 21(d) be established to the satisfaction of the Commissioner of Internal Revenue, and no provision is made for judicial review. The transcript of the hearing before the Commissioner of Internal

Revenue is the sole record of the case on appeal to the Courts. The effect of such section is therefore to limit the function of the judicial review to the determination of whether there was any evidence submitted to the Commissioner of Internal Revenue tending to support the findings of the Commission. Said Section 21(d) therefore deprives the plaintiff of its property without due process of law in violation of the Fifth Amendment to the Constitution.

14.

Under said Section 21(d) of said Agricultural Adjustment Act, if the processing tax has been either passed on or passed back by the plaintiff, then the plaintiff cannot maintain any action to recover the tax, if it is ultimately determined to be invalid, either for its own account or for the account of the persons to whom the processing tax has been thus passed on or passed back by the plaintiff; nor can the persons to whom the processing tax has been thus passed on or passed back maintain such an action on their own account, but all right of action by anyone to recover the tax, if it has been passed on or passed back, has been wholly taken away by said amendments to said Agricultural Adjustment Act. Moreover, Section 21(a) of said Act and Section 405 of the Revenue Act of 1935 deprive the Courts of power to render declaratory judgments with respect to such alleged taxes. By reason of the impossibilities of proof hereinabove referred to, the practical effect of said Act will be to deny taxpayers and the plaintiff all means of securing a judicial decision as to the constitutionality of the processing taxes, unless the Court grants the relief herein sought.

15.

Plaintiff further shows that by Section 30 of said Amendment of August 24, 1935, Section 21(a) was

added to said Act, which in substance provides that no suit to enjoin the collection of any tax imposed by said Act shall be maintained. Plaintiff alleges that said section is not intended to apply, and does not apply, to the injunction prayed for by this plaintiff inasmuch as plaintiff has no adequate remedy at law. Plaintiff alleges, however, that if said section should be interpreted as providing that no injunction should be granted to the plaintiff as prayed for in this cause, then the said section, together with the other provisions of said Act, is invalid and in violation of the Fifth Amendment to the Constitution of the United States, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes will be collected from the plaintiff and the plaintiff will have no remedy to prevent the collection of said unlawful taxes, and will be forever deprived of the right in any manner to test the constitutionality of such taxes.

16.

Said Section 21(d) further denies to the plaintiff a complete and adequate remedy at law, because a multiplicity of claims and suits would be required to enforce such rights as are granted thereunder and because said subsection requires that the facts required to be proved thereunder be established to the satisfaction of the Commissioner of Internal Revenue and makes no provision for a judicial review of his decision.

17.

A refund of processing taxes paid by the plaintiff could not actually be obtained even if it were possible for the plaintiff to prove the negative facts required by subsection (d) of Article 21, because Congress has

not appropriated funds for the payment of such refunds and plaintiff believes, that in view of the aggregate amount involved, there is a reasonable doubt whether such appropriation would ever be made.

18.

Plaintiff is ready, able and willing and hereby offers and agrees that in the event the injunctive relief herein prayed for is granted, it will deposit at such time and in such manner as this Court shall direct the said sums claimed to be due from plaintiff for processing taxes on account of the rice processed by plaintiff during the month of September, 1935, and the plaintiff further offers and agrees that at the end of each month hereafter it will file processing tax returns with the defendant as required by existing laws and regulations and that, as and when processing taxes under said returns become due and payable according to existing laws and regulations or any extension lawfully granted to the plaintiff, it will deposit the amount of such taxes in such manner as the Court may direct, all such deposits to abide the final decree in this cause.

Wherefore, plaintiff being without an adequate remedy at law prays:

1. That process issue and be served upon the defendant requiring him to appear and answer this bill, but not under oath, and answer under oath being hereby expressly waived;

2. That pending the hearing of the application for a preliminary injunction hereinafter prayed for, a temporary restraining order issue immediately enjoining and restraining the defendant until the hearing of its application for a preliminary injunction or until

the further order of this Court, from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in Court or otherwise, any processing taxes under and pursuant to said Agricultural Adjustment Act and any interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

3. That notice issue to the defendant advising him that plaintiff is hereby applying for a preliminary injunction and that plaintiff's said application will be heard at a time to be fixed by the Court in said notice, and that upon said hearing a preliminary injunction pending the final disposition of this case be issued enjoining and restraining the defendant from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in Court or otherwise, any processing taxes under and pursuant to said Agricultural Adjustment Act and any interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

4. That at the final hearing of this cause said preliminary injunction shall not have been granted, then that a permanent injunction be granted permanently restraining and enjoining the defendant from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in Court or otherwise, any processing taxes under and pursuant to said Agricultural Adjustment Act and any

interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

5. That at the final hearing it be adjudicated that the provisions of said Agricultural Adjustment Act providing for the levying, assessing and collecting of said processing taxes against and from the plaintiff are invalid, unlawful and unconstitutional on each and every one of the grounds upon which they are hereinabove alleged to be unlawful, invalid and unconstitutional; and that the defendant has no lawful right to attempt in any manner to collect said processing taxes from the plaintiff or any of the penalties or interest thereon purported to be provided for in said Agricultural Adjustment Act;

6. And plaintiff prays for such other and further relief, both general and special, to which it may be justly entitled.

(Signed) E. V. SCHAFER,
(Signed) JOHN P. BULLINGTON,
HOMER L. BRUCE.
(Signed) BAKER, BOTTS, ANDREWS & WHARTON,
By JOHN P. BULLINGTON,
Attorneys for Plaintiff.

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority on this day personally appeared E. V. Schafer, who having been by me first duly sworn, stated on oath that he the ....., a corporation plaintiff in the above cause, and that he has been duly authorized by said corporation to make this affidavit for and in its behalf; that

he has read the foregoing and above bill and knows the contents thereof and that the facts therein set out are true, except as to such facts as are therein stated on information and belief, and that as to those facts so stated to be on information and belief, he believes them to be true.

(Signed) E. V. SCHAFER.

Subscribed and Sworn to before me this 25th day of October, 1935.

(Signed) HAROLD J. ZERINGER,
Notary Public in and for
(Seal) Orleans Parish, Louisiana.

EXHIBIT "A."

Filed October 25, 1935.

Issued April 18, 1935.

United States Department of Agriculture,
Agricultural Adjustment Administration.

Administrative Rulings Relating to the 1935 Southern Rice Production Adjustment Program.

Explanation.

These Administrative Rulings apply to and are part of the Southern Rice Production Adjustment Contract and documents pertaining thereto.

If any of the provisions are not understood, the Community or County Committee should be consulted. No producer should make out and submit to his Community or County Committee an Application or a Contract or other documents pertaining thereto with-

out knowing exactly what he must do in order to receive the benefits of the program.

I. Definitions.—As used in the Southern Rice Production Adjustment Application, Declaration, Contract, Schedule, and these Administrative Rulings:

(a) "Person," "tenant," "landlord," "producer," and "well or canal operator," include individuals, copartnerships, and corporations; and where it is required by the context, the singular shall include the plural.

(b) "Farm" means one contiguous tract of land operated as one unit substantially separate from any other such tract of land.

(c) "Producer" includes persons owning and operating their own farms; tenants operating farms rented for cash; tenants operating farms under a crop-share lease, contract, or agreement; landlords leasing to share tenants; corporations, copartnerships, or individuals furnishing water for production of rice on a share basis; and such other persons or classes of persons as the Secretary may determine to be eligible to sign Southern Rice Production Adjustment Contracts.

(d) "Participation in the production of rice" means sharing as a producer in any manner in the production of rice on a farm.

(e) "Farming Operation" means the production of rice or the participation in the production of rice by a producer.

(f) "Application" means any Application for Rice Acreage Allotment (forms Rice 1 and 2) heretofore or hereafter executed by any producer. "Application

serial number" means the serial number of any such Application.

(g) "Declaration" means any 1935 Southern Rice Declaration of Farm Acreage (form Rice 30) heretofore or hereafter executed by any producer. The "farm serial number" means the serial number of any such Declaration.

(h) "Schedule" means any Producer's Schedule of Rice Acreage (Form Rice-37) heretofore or hereafter executed by any producer. Each such Schedule shall bear the same serial number as the Contract executed by the producer who executes the Schedule.

(i) "Contract" means any 1935 Southern Rice Production Adjustment Contract (Form Rice-36) heretofore or hereafter executed by any producer. The "Contract serial number" means the serial number of any such Contract.

(j) "1935" means the period from January 1, 1935, to December 31, 1935.

(k) "1934" means the period from January 1, 1934 to December 31, 1934.

(l) The term "State base period" means the period of calendar years 1929 to 1933, inclusive.

(m) The "State Allotment" shall be 135,000 acres for Arkansas, 364,500 acres for Louisiana, and 142,500 acres for Texas. The "State Quota" shall be 1,834,722 barrels for Arkansas, 3,898,333 barrels for Louisiana, and 2,010,833 barrels for Texas.

(n) The term "base period" in Arkansas and Louisiana means the period of the calendar years

1929 to 1933, inclusive, and in Texas the years 1931 to 1933, inclusive.

(o) The "production history" of a producer means, as the context may require, the producer's rice acreage or rice production, or both, for the base period as adjusted to the official figures and accepted by the State Committee.

(p) The "producer's Allotment" and the "producer's Quota" means respectively the rice acreage and the rice production assigned by the State Committee, acting for and on behalf of the Secretary, to the producer for 1935 and determined according to the procedure set forth in Administrative Ruling II hereof.

(q) The "acreage allocated" by the producer means that part of a producer's allotment which, in a Declaration, he allocates to a given farm as a basis for determining his share of the total rice acreage planted on that farm in 1935.

(r) "Producer's share of the rice acreage planted" and the "Producer's share of the acreage planted to rice in 1935" each means with respect to any farm, that acreage which bears the same ratio to the total rice acreage planted on that farm in 1935 (as determined upon checking compliance with the Contract in the manner prescribed by the Secretary) that the acreage allocated by the producer to that farm in a Declaration bears to the total rice acreage allocated to that farm in such Declaration.

(s) The "Secretary" means the Secretary of Agriculture of the United States.

(t) "Rice Section" means the Rice Section of the Agricultural Adjustment Administration.

(u) "Official figures" means the records of acreage and production prepared by the United States Department of Agriculture.

(v) A "barrel" means 162 pounds of rough rice.

(w) A "bushel" means 45 pounds of rough rice.

II. Determination of Allotments and Quotas.—1. The allotment of a producer shall be determined by each State Committee as follows: (a) Add the acreage of rice planted annually by each producer for his own account during the base period, after adjustment of acreage of all producers to the official figures for each state for each of the years of the base period; (b) Divide the total thus secured by five (5) in Louisiana and in Arkansas, and the total thus secured by three (3) in Texas; (c) Reduce the result obtained by 20 per cent in Louisiana and in Arkansas and the result obtained by 22 percent in Texas.

The total allotments assigned to producers in each state shall not in any event exceed the state allotment for that state.

2. The quota of a producer shall be determined by each State Committee as follows: (a) Add the number of barrels of rough rice produced annually by each producer for his own account during the base period, after adjustment of the production of all producers to official figures for each state for each of the years of the base period; (b) Divide the total thus secured by five (5) in Louisiana and in Arkansas, and the total thus secured by three (3) in Texas; (c) Reduce the result obtained by 20 percent in Louisiana and in Arkansas and the result obtained by 22 percent in Texas.

The total quotas assigned to producers in each state shall not in any event exceed the state quota for that state.

3. If the total of allotments and quotas determined according to the provisions of sections 1 and 2 of this numbered ruling, in any state, is less than the State Allotment and State Quota such excess may be allocated to producers by the State Committee, subject to approval by the Secretary or his authorized agent.

4. The Allotment and Quota are based upon the personal production history of the producer, regardless of where the rice was produced and are the measure of such history. The producer's production history shall not be transferred except as the State Committee shall, in writing, approve transfers made pursuant to the provisions of subsections a, b, and c of this numbered paragraph 4 of Administrative Ruling II. All requests for transfer of production history shall be in writing, signed by, or on behalf of the producer by his duly authorized agent, and approval thereof shall be in writing signed by at least two members of the State Committee. In no event shall the State Committee approve the transfer of production history by reason of foreclosure, execution or any forced sale.

(a) If a producer has died or has been declared legally incompetent by a Court of competent jurisdiction and has not executed, prior to the date of such death or incompetency, an Application for an allotment and quota, his records of production may be used by such heirs or devisees, or such member of the family of such deceased producer or by such members of the family of such incompetent producer as are continuing the farming operation of the deceased or incompetent producer, upon their furnishing proof of such relation-

ship and succession to the producer's farming operation.

(b) If a well or canal operator voluntarily sells his well or canal system and has not executed an application, his production history shall be transferred to such successor, provided that the former well or canal operator was not engaged in farming operations in 1934.

(c) If a partnership is dissolved before an application for an allotment and quota has been executed by or on behalf of the partnership, its records of rice production for the base period shall be divided among the partners in such proportions as is agreed upon by the partners or their authorized representatives in writing submitted to the State Committee.

5. In all figures representing final determination of individual allotments and quotas, fractions amounting to one-half a unit or less shall be dropped and fractions amounting to more than one-half a unit shall be considered a whole unit.

6. If a producer during the base period had operated in more than one state, he shall apply for an allotment and quota to the State Committee of each state in which he had farmed during the base period. Only the history earned by the producer in that state shall be presented to the State Committee in his Application. No producer shall be assigned Allotments and Quotas in two or more states, larger in the aggregate, than the Allotments and Quotas assignable to him in one state, had all of his farming operations been confined to that one state.

7. The sum of all Allotments and of all Quotas within a State shall not in any event exceed the State Allotment and Quota, respectively.

III. Transfer of Allotment and Quota.—The producer's Allotment and Quota shall not be transferred except as the State Committee shall in writing approve transfers made pursuant to the provisions of subsections a, b, c, and d of this Ruling III. In no event shall the State Committee approve the transfer of an Allotment or Quota by reason of foreclosure, execution, or any forced sale. All requests for transfer shall be made in writing signed by or on behalf of the producer by his duly authorized agent, and approval thereof shall be in writing signed by at least two members of the State Committee.

(a) If a producer dies or has been declared incompetent by a Court of competent jurisdiction after executing an Application but before executing a Contract, his allotment and quota may be transferred to such heirs, devisees, or such members of the family of such deceased producer or such members of the family of such incompetent producer as are continuing the farming operations of the deceased or incompetent producer, upon their furnishing proof of such relationship and succession to the producer's farming operation.

(b) If a producer voluntarily withdraws, either wholly or in part, from the production of rice after executing an Application but before executing a Contract, he may transfer all or part of his Allotment and Quota to such persons as are continuing his farming operation, upon proof of such withdrawal and succession.

(c) If a producer has become disabled and has retired from the production of rice after executing an Application but before executing a Contract, he may transfer all or part of his Allotment and Quota to such

person as is continuing his farming operations upon proof of such disability, retirement, and succession.

(d) Upon dissolution of a partnership, after an Application has been executed by or on behalf of the partnership, but before a Contract has been executed by or on behalf of the partnership, the Allotment and Quota shall be divided among the partners in such proportions as is agreed upon by the partners or their duly authorized representatives in writing submitted to the State Committee.

IV. Use of Allotment and Quotas by Well or Canal Operators.—If a well or canal operator has an allotment and quota assigned to him by the State Committee on the basis of his personal history as a furnisher of water on a crop share basis, such well or canal operator shall not change his status so as to use such allotment and quota in a capacity other than as a furnisher of water on a share crop basis.

V. Signing of Application, Declaration, Contracts, and Other Documents by a Person in a Representative Capacity.—

(1) In the event any document is to be executed on behalf of a Corporation, it shall be signed on behalf of the Corporation by an officer of the Corporation, who shall state his title, and affix the corporate seal to the Contract, (If the Corporation has no corporate seal, the following statement in writing shall appear over the signature, "No corporate seal required or adopted,") or by a representative of the corporation other than an officer, who has been authorized by the corporation to execute the contract by power of attorney, under seal, duly executed on behalf of the corporation on a prescribed form and filed with the Comptroller of the Agricultural Adjustment Administration at Washington, D. C., or

attached to the contract, which authorization shall be considered a part of the contract documents.

(2) In the event a document is to be signed by an executor, administrator, guardian of an incompetent person, receiver, or other person appointed by a Court in a fiduciary capacity, there shall be furnished either the original or a certified copy of the Court order of appointment or a certificate on a prescribed form showing that such person was duly appointed as such fiduciary and that the appointment is still in full force and effect.

(3) Where a document is signed by a manager or an agent for a producer, the original or a certified copy of a Power of Attorney, on a prescribed form, authorizing the manager or agent so to sign shall be furnished.

(4) If the producer is a Governmental body or agency, there shall be attached to the document a certified copy of a resolution of the Board or other authority authorized by statute to lease and contract in regard to the land and personal property covered by the contract, authorizing the execution of such document by the person executing the document on its behalf.

(5) When one producer has several documents to be signed by the same agent or attorney, a properly executed power of attorney may be filed with the Comptroller of the Agricultural Adjustment Administration to cover all such cases, and shall be considered as a part of each document so signed.

(6) A document to be signed for a partnership shall be executed in the name of the partnership and of each partner as an individual, by each member of

the partnership, or on behalf of each partner who does not personally sign, by an agent duly authorized to so sign by a Power of Attorney, on a prescribed form.

VI. Pledge of Adjustment Payments.—Adjustment payments may not be assigned under any condition. This is forbidden by the Contract, as well as prohibited by law.

However, the producer's right to adjustment payments under the Contract may be pledged in order to obtain funds (or credit) for carrying on the current operation of the farm. The expression "funds" (or credit) for carrying on the current operation of the farm and "current production credit" means funds or credit to meet any necessary expense of preparing of land, planting, cultivating, watering, harvesting, and marketing of the rice crop grown in the year 1935. Without in any way limiting the exclusiveness of the above definition, the expression shall not include cash rent or debts incurred in connection with the production of past crops.

No pledge of any producer's right to adjustment payments under his contract for any purpose other than to procure current production credit as defined above shall give rise to any obligation under the Contract upon any payee designated therein by the producer to distribute such payment, when and if accepted by such payee, to the person claiming to hold such a pledge not given for current production credit.

Dated April 18, 1935.

R. G. TUGWELL,
Acting Secretary of Agriculture.

EXHIBIT "B".

Filed Oct. 25, 1935.

Form Rice 36,
U. S. Department of Agriculture,
Agricultural Adjustment Administration,
Rice Section.
Form approved by Comptroller General, U. S.,
May 1, 1935.

1935 Southern Rice Production Adjustment Contract.

(Pursuant to and to effectuate the purposes of the Agricultural Adjustment Act, approved May 12, 1933, as amended, hereinafter referred to as the Act.)

I. Performance by Producer:

1. The undersigned producer (and each and all of them if more than one signs this instrument) hereby offer(s) to enter into a contract with the Secretary of Agriculture (hereinafter referred to as the "Secretary") upon the terms and conditions hereinafter set forth and subject to such regulations or administrative rulings (which shall be part of the terms and conditions of this contract) as have been heretofore or may hereafter be prescribed by the Secretary relating to 1935 Southern Rice Production Adjustment Contracts. This contract shall apply to every farm upon which the producer participates in any manner in the production of rice in 1935 (hereinafter referred to as "the farm(s) covered by this contract"). This offer shall become a binding contract upon its acceptance by the Secretary.

2. The producer,

(a) Represents that he has allocated to each farm upon which he will participate in any manner in the production of rice in 1935 some part of his allotment and that the total acreage allocated by the producer to all such farms does not exceed his allotment;

(b) Agrees that he will not share or participate in any manner in the production of rice in 1935 on any farm to which he has not allocated a portion of his allotment;

(c) Agrees that for the purposes of checking compliance and making payments under this contract "the producer's share of the acreage planted to rice in 1935" on each farm covered by this contract shall be that acreage actually planted to rice on such farm in 1935 which bears the same ratio to the total acreage planted to rice on such farm in 1935 that the acreage allocated by the producer to such farm bears to the total acreage allocated thereto by all persons participating in the production of rice thereon;

(d) Agrees that his total share of the acreage planted to rice in 1935 on all the farms covered by this contract shall not exceed his allotment;

(e) Agrees that the acreage permitted under this contract to be planted to rice in 1935 shall be farmed in a workmanlike manner throughout 1935;

(f) Applies for membership in the Rice Production Control Association organized pursuant to Form Rice 35 in each County or Parish in which a farm covered by this contract is located;

(g) Agrees to permit access by any authorized agent of the Secretary to the farm(s) covered by this contract, and to all fiscal books, records, and documents, regardless of where located, pertaining to the

production and/or sale of rice on or from any and all of such farms, and expressly waives any right to have such records kept confidential;

(h) Agrees not to sell, pledge, transfer, or assign, in whole or in part, this contract or his right to or claim for payments under this contract, and not to execute any power of attorney to collect such payments, and any sale, pledge or assignment, order or power of attorney shall be null and void, except that the producer may pledge or hypothecate his right to any adjustment payments under this contract for the purpose of obtaining funds (or credit) for carrying on the current operation of the farm(s) covered by this contract (hereinafter referred to as "current production credit") and such pledge or hypothecation shall operate to establish an interest or right on the part of the pledgee in and to said adjustment payments as against any other person or persons, but the pledge or hypothecation thereof shall not alter the provisions of paragraph 5 that all adjustment payment checks drawn in compliance with this contract shall be made payable to the payee therein stipulated. If the adjustment payments herein provided for shall have been pledged by the producer for current production credit, the producer, or if a payee is designated in paragraph 5 hereof and accepts such payment, then such payee if notified in writing of the pledge, shall receive the adjustment payment in trust to pay therefrom to the pledgee the amount of the obligation owing for current production credit secured by such pledge and to pay the balance of said payment to the producer. If a payee other than the producer is named in paragraph 5 hereof, and if such payee shall not have been notified of any pledge of the adjustment payments for current production credit made pursuant to the terms of this numbered paragraph, such payee shall receive such payments in trust to pay the whole amount

thereof to the producer, it being expressly understood and agreed that the Secretary shall have no duty or obligation to see that distribution is made in accordance with the foregoing provisions, but shall have the right to enforce the performance of said trust by the payee;

(i) Represents that the statements contained herein are true to the best of his information and belief. Without limitation of any other right or remedy of the Secretary conferred by law or this contract, a material misstatement herein or in any information furnished by the producer in connection with this contract or any noncompliance by the producer with any of the terms hereof, or with any applicable regulation or administrative ruling which has been or may hereafter be prescribed by the Secretary with reference to 1935 Southern Rice Production Adjustment Contracts shall be grounds for termination of this contract by the Secretary. The determination of the Secretary that any such misstatement or noncompliance has occurred shall be final and conclusive. In the event of termination of this contract by the Secretary, the producer shall return to the Secretary all payments theretofore made under this contract, together with all costs incident to the collection thereof.

II. Performance by Secretary:

3. Amount of Payments.—The Secretary shall, as a consideration for the performance by the producer of all the terms and conditions of this contract, and in the manner and at the times specified in paragraph 4 hereof, make

(1) A first adjustment payment at a rate of 81 cents per barrel of rice, and

(2) A second adjustment payment at a rate per barrel of rice, uniformly applicable to all such contracts, to be determined by the Secretary,

upon an amount of rice determined in the manner specified in sub-paragraph (a) or (b) of this numbered paragraph, whichever shall apply:

(a) If the producer's total share of the acreage planted to rice in 1935 on all the farm(s) covered by this contract is not more than 100 per cent nor less than 85 per cent of the producer's allotment, such payments shall be made upon that number of barrels of rice which equals 85 per cent of the producer's quota.

(b) If the producer's total share of the acreage planted to rice in 1935 on all the farm(s) covered by this contract is less than 85 per cent of the producer's allotment, such payments shall be made upon that number of barrels of rice which bears the same ratio to the producer's quota that the producer's total share of the acreage planted to rice in 1935 on all such farms bears to the producer's allotment.

4. Time of Payments.

(a) The first adjustment payment shall be made as soon as practicable after August 1, 1935, provided that proof satisfactory to the Secretary, of compliance with the terms and conditions of this contract, has been submitted to the Secretary or his authorized agent.

(b) The second adjustment payment shall be made as soon as practicable after December 1, 1935, provided that proof satisfactory to the Secretary, of compliance with the terms and conditions of this contract, has been submitted to the Secretary or his authorized agent.

5. (a). All adjustment payments hereunder are for the benefit of the producer and shall be made only to the producer unless the producer shall, by naming another person in this numbered paragraph, direct that such payments be made to the person so named, in which event the payments shall be made by check drawn payable to the person so named who shall receive them subject to the provisions of this contract, and particularly subject to the provisions of subparagraph (h) of paragraph 2 hereof. If the person so named shall have died or shall refuse to accept such payment, or shall for any reason be unable to receive and distribute such payment subject to the provisions of this contract then such payment shall be made to the producer, who likewise shall receive such payments subject to the provisions of this contract and particularly subject to the provisions of subparagraph (h) of paragraph 2 hereof.

(Stamp State and County code above.)

State ..... Parish } .....
County }
Community ..... Contract }
Serial No. } .....

5. (b). Designated payee .....
of .....
(Address of payee)

III. Signature(s) of Producer(s).

6. In Witness Whereof, each of the undersigned has hereunto set his hand on the date indicated opposite his signature.

...., 1935.
(Witness) (Date of Producer's signature)

....
(Signature of Producer) (Application No.)

Address of Producer (Rural Route No.) .... (Box No.) .... (Post Office) ..... (State) .....

...., 1935.
(Witness) (Date of Producer's signature)

....
(Signature of Producer) (Application No.)

Address of Producer (Rural Route No.) .... (Box No.) .... (Post Office) ..... (State) .....

IV. Certification of Committees.

We Hereby Certify that we have examined the foregoing offer and that, to the best of our information and belief, the total acreage allocated by the producer to all the farm(s) covered by this contract does not exceed the producer's allotment, and hereby recommend that the foregoing offer be accepted by the Secretary.

.....
(For Community Committee)

.....
(For County Committee)

.....
(For State Committee)

.....
(For Community Committee)

.....
(For County Committee)

.....
(For State Committee)

Date....., 1935. Date....., 1935. Date....., 1935.

V. Acceptance by Secretary.

In consideration of and in reliance upon the agreements of the producer herein set forth and the repre-

sentations made by the producer in and in connection with this contract, this offer is hereby accepted, this .....day of ....., 1935.

HENRY A. WALLACE,
Secretary of Agriculture, for and on behalf of the United States,

By .....,
Representative of Secretary of Agriculture.

VI. State Committee's Certificate of Compliance.

The undersigned State committeemen certify that the producer's total share of the acreage planted to rice in 1935 on all farm(s) covered by this Contract does not exceed the producer's allotment, and further certify that the producer's allotment and quota and the producer's total share of the acreage planted to rice in 1935 on all farms upon which the producer is participating in the production of rice in 1935 are correctly stated in items 1, 2, and 3, respectively, of part VIII below, and further certify that to the best of their information and belief the producer has fully complied with all terms of this Contract and all regulations and administrative rulings issued by the Secretary applicable up to and including the date of this certificate.

Date ....., 1935.

.....
(For State Committee)

.....
(For State Committee)

VII. Producer's Certificate of Compliance.

The producer certifies that his total share of the acreage planted to rice in 1935 on all farms upon which he is participating in any manner in the production of

rice does not exceed his allotment, that his allotment and quota, and his total share of the acreage planted to rice in 1935 on all farms on which he is participating in any manner in the production of rice in 1935 are correctly stated in items 1, 2, and 3, respectively, in part VIII of this contract, and further certifies that he is not sharing in the production of rice on any farms covered by this Contract are being farmed in a workmanlike manner, and that he has fully complied with all other terms of this Contract, and with all regulations and administrative rulings issued by the Secretary, applicable up to and including the date of this certification.

..... (Witness)
Date....., 1935.

....., (Producer.)

VIII. Certified Basis for Determining Payments.

1. Producer's allotment .....(acres) .....
2. Producer's quota .....(bbl.) .....
3. Producer's share of acreage measured .....
4. Quota percentage (item 3 ÷ item 1)..... .....%*
5. Number of barrels for payment (item 4 times item 2) ....

*If the above percentage is not more than 100 nor less than 85 per cent, then 85 per cent shall be used.

Do not write in this blank; for use by Comptroller's Office.

Computation of payments:

1935 first adjustment payment Item 5 times 81¢ per bbl. ....$.....

1935 second adjustment payment, Item 5 times ....¢ per bbl.....$.....

Total .....$.....

Do Not Write in Space Below.

Certificate of Comptroller.

Audited and approved for 1935 first adjustment payment in the amount of ..... $.....

JOHN B. PAYNE,
Comptroller,

By .....,
Auditor.

Schedule No. .....

Date.....

Paid ..... by check on Treasurer of the United States in favor of payee or payees named thereon.

Check No..... $.....

Certificate of Comptroller.

Audited and approved for 1935 second adjustment payment in the amount of ..... $.....

JOHN B. PAYNE,
Comptroller,

By .....,
Auditor.

Schedule No. .....

Date.....

Paid ..... by check on Treasurer of the United States in favor of payee or payees named thereon.

Check No..... $.....

(Any intentional misrepresentation of fact made in this contract for the purpose of defrauding the United States will be subject to the criminal provisions of the United States Code.)

EXHIBIT "C".

Filed October 25, 1935.

Sec. 21. (a) No suit, action, or proceeding (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any Court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (d) of this section, may be reserved in the Court's order.

(b) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regulations of the Secretary with the approval of the President prior to the date of the adoption of this amendment,

are hereby legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which have accrued and remain unpaid on the date of the adoption of this amendment shall be assessed and collected pursuant to section 19, and to the provisions of law made applicable thereby. Nothing in this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary of Agriculture or of the President done or made prior to the date of the adoption of this amendment.

(c) The making of rental and benefit payments under this title, prior to the date of the adoption of this amendment, as determined, prescribed, proclaimed and made effective by the proclamations of the Secretary of Agriculture or of the President or by regulations of the Secretary, and the initiation, if formally approved by the Secretary of Agriculture prior to such date of adjustment programs under section 8 (1) of this title, and the making of agreements with producers prior to such date, and the adoption of other voluntary methods prior to such date, by the Secretary of Agriculture under this title, and rental and benefit payments made pursuant thereto, are hereby legalized and ratified, and the making of all such agreements and payments, the initiation of such programs, and the adoption of all such methods prior to such date are hereby legalized, ratified, and confirmed as fully to all intents and purposes as if each such agreement, program, method, and payment had been specifically authorized and made effective and the rate and amount thereof fixed specifically by prior Act of Congress.

(d) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the Court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be refunded or credited to any person (not

a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (a) and (b) of section 16, had the tax terminated by proclamation pursuant to the provisions of section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish to the satisfaction of the Commissioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the Court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any Court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held invalid a claim therefor (conforming to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2)

no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such Courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, on jurisdiction of such Courts based upon the amount in controversy.

(e) In connection with the establishment, by any claimant, of the facts required to be established in subsection (d) of this section, the Commissioner of Internal Revenue is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda, relative to any matter affecting the findings to be made by the Commissioner pursuant to subsection (d) of this section, to require the attendance of the claimant or of any officer or employee of the claimant, or the attendance of any other person having knowledge in the premises, and to take, or cause to be taken, his testimony with reference to any such matter, with power to administer oaths to such person or persons. It shall be lawful for the Commissioner, or any collector designated by him, to summon witnesses on behalf of the United States or of any claimant to appear before the Commissioner, or before any person designated by him, at a time and place named in the

summons, and to produce such books, papers, correspondence, memoranda, or other records as the Commissioner may deem relevant or material, and to give testimony or answer interrogatories, under oath, relating to any matter affecting the findings to be made by the Commissioner pursuant to subsection (d) of this section. The provisions of Revised Statutes 3174 and of Revised Statutes 3175 shall be applicable with respect to any summons issued pursuant to the provisions of this subsection. Any witness summoned under this subsection shall be paid, by the party on whose behalf such witness was summoned, the same fees and mileage as are paid witnesses in the Courts of the United States. All information obtained by the Commissioner pursuant to this subsection shall be available to the Secretary of Agriculture upon written request therefor. Such information shall be kept confidential by all officers and employees of the Department of Agriculture, and any such officer or employee who violates this requirement shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both, and shall be removed from office.

(f) No refund, credit, or abatement shall be made or allowed of the amount of any tax, under section 15, or section 17, unless, within one year after the right to such refund, credit, or abatement has accrued, a claim for such refund, credit, or abatement (conforming to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled to such refund, credit, or abatement, except that if the right to any such refund, credit, or abatement accrued prior to the date of the adoption of this amendment, then such one year period shall be computed from the date of this amendment. No interest shall be allowed or paid, or included in any judgment, with respect to any such claim for refund or credit.

(g) The provisions of section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax, or any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of section 317 of the Tariff Act of 1930.

RETURN TO RULE TO SHOW CAUSE WHY TEMPORARY INJUNCTION SHOULD NOT ISSUE.

Filed Oct 28th, 1935.

(Title Omitted.)

To the Honorable the Judge of the District Court of the United States in and for the Eastern District of Louisiana:

Now into Court comes Rufus W. Fontenot, Acting Collector of Internal Revenue, Defendant in the above entitled and numbered cause, through Rene A. Viosca, United States Attorney in and for the Eastern District of Louisiana, and Robert Weinstein, Assistant United States Attorney for said District, his attorneys, and by virtue of the rules and practice of this Court requiring the defendant in rule to file all defenses to the rule on the date set for the hearing on the application for a temporary injunction, and with full reservation of all of his rights under the pleadings in this cause,

answers the rule by stating that for lack of sufficient information to justify a belief he denies all of the allegations of paragraph two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen of the Bill of Complaint, and also denies the allegations of paragraph one with the exception of the statement relative to the defendant, which statement is admitted.

Your Respondent further avers that the proceedings should be dismissed for the reasons that this Honorable Court has no jurisdiction and that the Agricultural Adjustment Act is constitutional, valid and enforceable.

Wherefore, your Respondent prays this Honorable Court to dismiss the Bill of Complaint at Complainant's costs and to refuse granting any injunction in these proceedings, and for all general and equitable relief.

(Signed) RENE A. VIOSCA,
United States Attorney.
(Signed) ROBERT WEINSTEIN,
Asst. United States Attorney.

(Verification.)

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, personally came Rene A. Viosca, who is the United States Attorney for the Eastern District of Louisiana, who in his oath says: That in his aforesaid official capacity he is of counsel for defendant in the above case; that he has drawn the return to the rule to show cause and that all the allegations of fact therein are true and correct to the best of his knowledge, information and belief.

(Signed) RENE A. VIOSCA.

Sworn to and subscribed before me this 28th day of October, 1935.

(Signed) CLAUDE D. SHAW,
Deputy Clerk, U. S. District Court, Eastern District of Louisiana.

MOTION TO DISMISS.

Filed Oct. 28, 1935.

(Title Omitted.)

To the Honorable, the Judge of the District Court of the United States in and for the Eastern District of Louisiana:

Comes now Rufus W. Fontenot, Acting Collector of Internal Revenue, defendant in the above entitled and numbered cause, by Rene A. Viosca, United States Attorney in and for the Eastern District of Louisiana, and Robert Weinstein, Assistant United States Attorney for said District, his attorneys, with full reservation of his rights to further plead in this cause, and moves the Court to dismiss the Bill of Complaint filed herein, with costs to be paid by the Complainant upon the following grounds and for the following reasons:

I.

That this Court is without jurisdiction to restrain or enjoin the collection of taxes herein involved, or to hear and/or determine the issues presented by said bill of complaint because:

1. Section 3224 of the Revised Statutes of the United States prohibits the maintaining in any Court of a suit for the purpose of restraining the assessment and/or collection of Federal Tax.

2. Section 21-A of the Agricultural Adjustment Act, as amended, prohibits the maintaining in any Court of a suit for the purpose of restraining the assessment and/or collection of any processing tax under the said Agricultural Adjustment Act.

3. The bill of complaint sets forth no facts which, if true, would entitle complainant to the relief prayed for in a Court of Equity.

4. Complainant has a plain, adequate and complete remedy in the ordinary course of law.

II.

That the United States of America is the real party in interest, which may not be sued without its consent.

III.

That there is no actual controversy between complainant and defendant or between any parties over which this Court has jurisdiction within the purview of the Declaratory Judgment Act.

IV.

That the Declaratory Judgment Act was not intended by the Congress to be used for the litigation of questions arising under the Revenue Laws, and particularly was not intended as a means for obtaining injunctive relief.

V.

This proceeding is prohibited by the provisions of the Declaratory Judgment Act, as amended, and cannot be maintained. (Revenue Act of 1935, approved August 31, 1935, Section 405).

Dated: this 28th day of October, 1935.
(Sgd.) RENE A. VIOSCA,
United States Attorney.
(Sgd.) ROBERT WEINSTEIN,
Assistant United States Attorney.

ORDER OF COURT CONSOLIDATING ALL CASES FOR TRIAL, ETC.

Filed Oct. 28, 1935.

United States District Court, Eastern District of Louisiana, New Orleans Division.

Docket No. 321—In Equity:

Rickert Rice Mills, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 322—In Equity:

A. B. Dore, doing business under the name of The Dore Rice Mill,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 323—In Equity:

United Rice Milling Products Co., Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 324—In Equity:

Baton Rouge Rice Mill, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 325—In Equity:

T. Simon
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 326—In Equity.

Levy Rice Milling Company, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 327—In Equity:

Farmers Rice Milling Company, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 328—In Equity:

Noble-Trotter Rice Milling Co., Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Considering the stipulation and agreement of counsel for all parties made this day in open Court;

It is Ordered that the above numbered and entitled cases be and they are hereby consolidated for the

purpose of trial and that the affidavits and evidence offered in one case be considered to apply to all.

(Signed) JOHN McDUFFIE, Judge.

New Orleans, Louisiana, October 28, 1935.

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, on this day personally appeared W. M. Reid, known to me, who being by me first duly sworn in terms of law deposed and said on his oath as follows:

My name is W. M. Reid. I reside in New Orleans, Louisiana, and am Executive Secretary of the Rice Millers' Association. My principal duties are the preparation and interpretation of statistical and economic data with regard to the rice milling industry. I have been engaged in the rice milling business since 1909, and from 1916 to 1928, I personally operated a rice mill. I am thoroughly familiar with the rice milling industry in all of its phases.

I have read all of the allegations contained in Section 12 of Plaintiff's bill of complaint and Equity 321, Rickert Rice Milling Company vs. Rufus W. Fontenot, Equity 322, A. B. Dore vs. Rufus W. Fontenot, Equity 323, United Rice Milling Products Company, Inc., vs. Rufus W. Fontenot and companion cases, and all of such allegations are true and correct in every respect.

It is true that rice millers, when they purchase rough rice, consider the fact that they will have to pay a processing tax on the milling of such rough rice. However, this is simply one of the many factors entering into the miller's determination of what he ought to

pay for rough rice. As a practical matter, when the rice miller negotiates for the purchase of a given lot of rice, he first estimates what he believes he could get for such rice after milling on the existing market for clean rice and rice products. He then estimates what he thinks it will cost him to process the rough rice into its various grades and products, and in this estimate is included the amount of the processing tax, as well as other taxes. Having made these estimates, he determines what he ought to pay for the rough rice. However this is not necessarily what he does pay, because each individual miller is buying in competition with other millers. Thus, if other millers are paying more than he thinks he ought to pay, he has to meet the price the others are paying, if he is to get any rice. No individual miller makes the rough rice market. It is a market made of the composite purchasing of all millers in the particular territory. While the estimates above referred to are made with regard to the market for clean rice and rice products at the time of the purchase of the rough rice, that market, however, does not necessarily control since rough rice is not ordinarily milled, and the clean rice and products sold until several months after the purchase of the rough rice.

Since the market for clean rice and rice products fluctuates from day to day and month to month, the prospects of the future market has a bearing on what the miller may have to pay for rough rice. Optimism with reference to the future market for clean rice on the part of a sufficient number of rice millers will force up the market for rough rice, and all millers will have to meet the increased price of rough rice (if they are to have any rice at all), even though some of them may be pessimistic as to the future market.

For example, the present market price of rough rice is quite high with reference to the present market price for clean rice and rice products. In other words, using the estimates above referred to, the cost

of rough rice on today's market plus estimated cost of milling (including the processing tax) is more than the miller could reasonably expect to procure for the rice and rice products made from such rough rice on the existing market for clean rice and rice products. This present day market for rough rice is not made by any individual miller, but is made by the composite of purchases by all millers in the territory. Thus, as I have previously said, while the processing tax is considered by the miller in determining what he ought to pay for rough rice, it is simply one of many factors entering into such determination, and is by no means controlling.

Furthermore, it is impossible to tell on any given purchase of rough rice how much, if at all, that price has been affected by the existence of the processing tax.

I am familiar with accounting and statistical methods, and I know of no possible method of keeping books and records in the rice business which would accurately reflect the gain or loss from the purchase, milling and sale of any given lot of rice as distinguished from the gain or loss from the aggregate of all transactions during a season. A profit or loss, however, may be estimated at any given time by the use of averages, predictions and arbitraries.

The rice milling business is seasonal; the season beginning on August 1st and ending on July 31st, the operations gradually increasing until the peak is reached during the months of October, November and December, and decreasing to the end of the season. For this reason as well as others, the cost of milling varies greatly from time to time during the season. The estimated cost of milling which millers use in budgeting and determining what they want to pay for rough rice is arrived at by averaging the cost of the entire season so that this factor, when used to estimate a profit or loss on a given transaction, could never be exact, and might be very

much too high or very much too low when applied to that particular transaction.

Under these circumstances, when a miller purchases a particular lot of rice, he may believe that all, or a part of the processing tax to be assessed on such rice will be absorbed by the farmer. On the other hand, he may believe that all, or a part of such tax will be absorbed by himself. However, he can never even know, much less prove, even after all the clean rice and rice products made from the particular lot of rough rice has been sold, whether he, or the farmer, or the purchaser, or all of them together has borne the ultimate economic burden of the tax. This is because any belief he may have had as to whether the burden of the tax would fall, must of necessity, have been based in part on estimates, which are in turn, based on averages, which are never accurate with respect to any given lot of rice. In addition, such belief must also be based in part on assumptions as to market conditions on clean rice and rice products, which may or may not be correct. The rough rice may go through the mill on a day when large amounts are being milled, and the cost per unit is lower than the average; or, it might go through on a day when little rice was being milled resulting in a unit cost higher than the average; or, it might go through partly on one kind of a day, and partly on another. Furthermore, the rice may not mill out what he expected, even if the market on clean rice and rice products remains the same. And, in addition, the price at which he eventually sells the clean rice and rice products may be substantially less or substantially more than the sale price on which he based his presumptions.

There is no necessary relation between the market for clean rice and for rice products, since they are sold for different purposes, and this is an added reason why the miller cannot possibly allocate the cost of a given lot of rough rice among the clean rice and rice products produced from it.

For example, it is entirely possible for the market on bran or hulls to be relatively high, while the market on the various grades of head rice is relatively low.

The rough rice market is affected by the clean rice and rice products market and vice versa, but it is as impossible to determine their relative affect on each other as it is to determine whether the hen or the egg came first. I know of no way of determining what either the rough rice or clean rice marked would be if there were no processing tax. I do know, however, that the individual miller cannot force down the price paid to the farmer for rough rice because of the tax, and thus force the farmer to pay all, or a part of the burden of the tax. The individual miller simply pays the market price for rough rice which has been fixed by the composite action of all millers, and it would be impossible to prove whether a lowering of the rough rice market was the result of the assessment of the tax, or whether it was caused by other factors, such as a drop in time clean rice and rice products market, a composite pessimism on the part of rice millers as to the future market or other factors. The same thing is true with regard to the market for clean rice and rice products, and no individual miller can arbitrarily force that market upwards in order to pass on the tax.

(Sgd.) W. M. REID.

Sworn and subscribed to before me, the undersigned authority, this 28 day of October, 1935.

(Sgd.) HARRY R. CABRAL.

(Seal) Notary Public.

State of Texas,
County of Harris.

Before me, the undersigned authority, on this day personally appeared Homer L. Bruce, who, having been by me duly sworn, stated on oath as follows:

He lives in Houston, Harris County, Texas, and is duly licensed and practicing attorney at law. He is

familiar with the bills of complaint that are being presented to the United States District Court at New Orleans, Louisiana, on behalf of certain rice millers of Louisiana seeking an injunction against the collection of processing taxes on rice, having worked with his partner Mr. John P. Bullington in the preparation of said bills of complaint, and is familiar with the general practice of the rice industry of selling rice on samples and the filling of orders for clean rice by mixing rice from different lots of clean rice in the manner set out in the bills of complaint.

This affidavit is made in connection with the allegations in said bills that it is impossible for the plaintiff rice millers to comply with the requirements of Section 21 (d) of the Agricultural Adjustment Act that they shall establish that no part of the processing tax has been passed on to the consumer or taken out of the price paid the producer before they are allowed to recover any processing taxes paid.

Section 8 (3) of the Agricultural Adjustment Act gave the Secretary of Agriculture authority to issue licenses to processors, including processors of rice, and provided that the Secretary should have the right to revoke any license for violations of its terms. Section 8 (2) of the same Act authorized the Secretary to enter into marketing agreements with processors.

In the fall of 1933, the Secretary entered into a marketing agreement with members of the southern rice milling industry, and at the same time issued a license applicable to all mills. This marketing agreement and the license were in substantially the same form. Later various amendments were made to both the marketing agreement and the license.

In the marketing agreement and in the license, the Secretary of Agriculture fixed the price to be paid to farmers for rough rice, these prices being set out in Article III of the marketing agreement and license hereinafter referred to, namely, the one effective on July 21, 1934. Article IV, Section 1 of the license

effective July 21, 1934, set out the minimum price that millers might sell clean rice for in the domestic market and that section is as follows:

"Section 1. To effectuate the purposes of this Amended license and to aid in the carrying out and enforcement of the provisions hereof, no miller shall offer for sale, sell or deliver for domestic consumption any quantity of clean rice for an amount per pocket less than the sum of

(a) the minimum price, determined pursuant to article III and Schedule 1, for the grade, variety and quantity of the rough rice from which such clean rice was milled,

(b) the conversion charge for such quantity of rough rice and prevailing at the time of such offer, sale or delivery, and

(c) the published car lot rail rate for transporting such rough rice from the customary point of delivery to the miller's mill, and

(d) the administrative assessment for such quantity of rough rice and prevailing when such rice was milled;

Provided, however, that any miller may offer clean rice for sale for export to foreign countries, on the foregoing basis less a maximum discount of 20 cents per barrel of such rough rice and may, if the rice is actually exported, sell or deliver clean rice for export to foreign countries on said basis less said maximum discount. The determination of the Millers Committee as to whether or not clean rice is actually exported

shall be final and conclusive, subject to appeal to the Secretary. Said minimum amounts, below which this section provides that clean rice shall not be offered for sale, sold, or delivered by a miller, apply f. o. b. the miller's mill.

Sec. 2. The conversion charge per barrel of rough rice shall, until and except as changed by the Secretary, be an amount equal to the sum of (a) seventy (70) cents per barrel of rough rice, (b) nine (9) cents per barrel of rough rice if standard one-hundred pound single packages are used for the clean rice, and (c) if cotton or paper inner linings or regula burlap outer slips are used for the clean rice, an additional five (5) cents per barrel of rough rice, or (d) if any other type of container is used for the clean rice, the actual invoice price for the container used. The Secretary may at any time and from time to time during the effective period, increase or decrease the amount of, and/or change the basis of computation of, the conversion charge."

One of the main purposes, if not actually the main purpose, of the Agricultural Adjustment Act and this license was to increase the price of rough rice paid the farmer, and in order to keep the rough rice price at a higher level, the Secretary attempted by this Section 1 to fix the price that clean rice might be sold at as roughly 79¢ per barrel above the cost of the rough rice. It was extremely important to keep the clean rice up to this level in order to maintain the rough rice price. In the fall of 1934, the Secretary of Agriculture brought proceedings, according to the information and belief of the affiant, against a number of different rice mills in Louisiana and to affiant's knowledge against Bay City Rice Mills of Bay City, Texas, a partnership composed of W. M. Loving and three other partners. The case against the Bay City Mills was case No. 11-1-7, entitled In the Matter of W.

M. Loving; R. Q. Pegram, S. M. Clements and L. D. Clements, Individually and as Co-partners trading under the name Bay City Rice Mills. One of the original charges against the Bay City Rice Mills was Charge No. 11, which charged in general terms that the Mill had sold clean rice for domestic consumption for an amount less than the price fixed for the sale of the clean rice pursuant to this license. This Charge 11 was later made more specific as follows:

"11. That the said Licensee since the effective date of said License has violated Section 1 of Article V of said License as in effect until July 21, 1934, 12:01 A. M. Eastern Standard Time, and Section 1 of Article IV of said License as in effect from July 21, 1934, 12:01 A. M. Eastern Standard Time on, in that said Licensee has offered for sale, sold and delivered, for domestic consumption, quantities of clean rice, to-wit: Clean rice lot numbered 36 on the books of the respondent derived from rough rice lot numbered 33 on the books of the respondent and purchased from C. E. Everitt; clean rice lot numbered 43 on the books of the respondent derived from rough rice lot number 33 on the books of the respondent and purchased from C. E. Everitt; clean rice lot numbered 123 on the books of the respondent derived from rough rice lot numbered 153 on the books of the respondent and purchased from A. P. Powers clean rice lot numbered 124 on the books of the respondent derived from rough rice lot numbered 154 on the books of the respondent and purchased from J. R. Reed; for an amount per pocket less than the price fixed for the sale of such clean rice pursuant to said Section 1 of Article V of said License as in effect up until July 21, 1934, 12:01 A. M. Eastern Standard Time, and pursuant to said Section 1 of Article IV of said License as in effect from July 21, 1934, 12:01 A. M. Eastern Standard Time on."

The affiant, together with Mr. W. E. Davant of Bay City, Texas, represented the Bay City Rice Mills in this hearing before the representatives of the Secretary of Agriculture on these charges, which hearing was held in Houston, Texas, and again on December 27, 1934, and ran through January 2, 1935.

The Bay City Rice Mills in that proceeding took the position, and so advised the Secretary of Agriculture's representatives, that it was utterly impossible, owing to the manner in which the rice industry is conducted, through the sale of clean rice on samples made up of mixes of different lots of clean rice, as more fully set out in the bills of complaint presented to the United States District Court at New Orleans in the processing tax suits, to determine in the case of any lot of rice, whether the clean rice had been sold for 79¢ more than the rough rice had cost, or for the amount above the cost of the clean rice that the Secretary required under Section 1 of Article IV.

The Secretary of Agriculture's representatives had access to all the books, vouchers and records of the Bay City Rice Mills, both in connection with its rough rice purchases and its clean rice sales and had several auditors continuously working on those records. The amount paid for the rough rice purchased from Evoritt, Powers and Reed, as set forth in said Charge II was established. The clean rice derived from the rough rice purchased from these three producers was traced at the hearing into the sales of clean rice into which they entered and the price of clean rice sales was established. However, owing to the fact that each quantity of clean rice that went into a sale was made up of a mixture from various lots of clean rice, which were in turn produced from various lots of rough rice bought from different producers, and owing to the fact that there was, as is usual in the rice business, an almost infinite variation in the combinations of these mixes of clean rice lots, and owing to the fact that rough rice when milled

produces different grades of clean rice, as set forth in the above mentioned bills of complaint, the Secretary of Agriculture was never able to show in that case whether or not the Bay City Rice Mills had obtained for the clean rice derived from the Evoritt, Powers, and Reed rough rice the amount (roughly 79c) above the cost of the rough rice that Article IV, Section 1, attempted to require the mill to get. Although that was one of the charges most vitally affecting the entire rice program in affiant's belief, and although the Secretary of Agriculture through his two attorneys who prosecuted the case and through his several auditors who were continuously working on the records of the Bay City Mills made every effort to prove the charge, the Secretary of Agriculture in his findings did not find that the charge had been proven and did not find that the Bay City Rice Mills had violated the license in the manner set forth in Charge 11.

Affiant believes, and on that belief states, that the reason the Secretary of Agriculture did not find that Charge 11 had been supported by any evidence was because it was utterly impossible practically to show whether clean rice had been sold for the amount above the rough rice cost that the license required.

The charge referred specifically to the sale of clean rice lots 36, 43, 123 and 124. Evidence as to the history of those clean rice lots is as set out below.

The clean rice in each case was included in various sales, each sale being represented by a separate invoice. The history of those clean rice lots was as follows: (As shown by the record in that case.)

Clean Rice Lot 36:

This rice came from rough rice lot 33 from C. E. Everitt. It was mixed with various other lots of rice and went in as a part of the rice sold and represented

by the following 9 invoices: Invoice Nos. 6615, 6622, 6634, 6639, 6645, 6767, 6770, 6771 and T-162 (R. 324-326).

The rice covered by invoice No. 6615 was made up of rice from various lots as follows:

39 pockets from lot 17, fancy
125 pockets from lot 31, fancy
200 pockets from lot 36, fancy
26 pockets from lot 33, heads
26 pockets from lot 31, heads
(R. 472.)

Invoice 6622 consisted of the following:

75 pockets from lot 26, fancy
250 pockets from lot 35, fancy
175 pockets from lot 36, fancy
(R. 475.)

Invoice 6634 consisted of the following:

148 pockets from lot 34 EP
75 pockets from lot 35 EP
75 pockets from lot 36 EP
81 pockets from lot 37 EP
68 pockets from lot 38 EP
150 pockets from lot 43 EP
201 pockets from lot 45 EP
(R. 478.)

There was no evidence whatsoever as to the different lots going to make up the rice on any of the other invoices heretofore or hereafter referred to, but each invoice represented a mix from various lots.

Clean Rice Lot 43:

This lot went into invoices 6634, 6639, 6644, T-126, T-127, T-128, and P-1006 (R. 327-329). No evidence

was introduced as to the component part of those invoices, except invoice 6634 above set forth, but they all consisted of mixes.

Clean Rice Lot 123:

This rice went into the following invoices:

Invoices Nos. 6832, 6833, T-187, T-188, 6840, T-195, 6839, T-200, 6885, 6886, T-201, T-202, T-187, T-188, and T-182 (R. 329 et seq.). No evidence was introduced as to the lots going into these invoices but they were all mixes.

Clean Rice Lot 124:

Affiant does not have the record at this time as to what invoices this lot went into but it was mixed into a number of mixed invoices.

To have traced the cost of the various lots of clean rice that went into each invoice would have been long involved and in fact practically impossible, and then to trace the cost of all rice going into all invoices into which any one of these clean rice lots went would have involved further and innumerable records and evidence.

This is further illustrated when it is noticed that a large number of rough rice lots and clean rice lots were involved, as, for example, in Charge 11 it referred to rough rice lot as high as No. 154 and clean rice lot as high as No. 124.

No charge was made that Bay City Rice Mills did not keep accurate and complete records of its operations.

Nor was any issue made as to the fact that the selling of rice by samples and mixing rice was usual and customary.

For example, Mr. F. A. Farda, who testified as a witness for the Secretary of Agriculture, and who is the Manager of Standard Rice Company, one of the largest rice milling companies in the United States, testified as follows:

"Mr. Farda:
Well, it is not common practice, in fact, it is not a practice to make a mixture just in order to put it in a warehouse and keep it. You make the mixture when you sell your rice, get ready to sell it, you sell it on a sample and then you make your composite mixture and your lots match your sample. *That is a common practice.*

"Mr. Davant:
Is it not a practice to make up these samples practically in the beginning of the season and to send them out as types?

"Mr. Farda:
The practice is to make hand mixes, and to send them samples, and when you sell on the samples you make your actual mixture, make it up." (R. 420-421.)

* * * *

"Mr. Farda:
The usual practice is, you don't make your mix until you have the rice sold." (R. 429-430.)

* * * *

"Mr. Farda:
You never make a mix until you have a sale made, because it would not be of material ad-

vantage to do so because you may not find another market for that particular blend that you make. *You therefore keep your rice in the original lots* to be in a position to make a blend of whatever the trade or market requires at that time." (R. 430.)

In connection with the above lots of clean rice, the Secretary's attorneys tried to make some allocation of the cost of rough rice to the different grades of clean rice produced as between fancy rice and head rice, but this was realized by all to be purely arbitrary allocation of cost without any real or sound basis for the same.

The above proceeding against Bay City Rice Mills was a proceeding before the Secretary of Agriculture to forfeit the license of Bay City Rice Mills for alleged violation of the license. The hearing was held before a representative of the Secretary of Agriculture.

In the foregoing affidavit the figure of 79c above rough rice cost has been referred to. That, as stated, was used only roughly. Under the license, the price for clean rice was to be the price fixed for rough rice plus the conversion charge plus the carload rail rate for transporting rough rice to the miller's mill plus the administrative assessment of 5c per barrel. The conversion charge was 70c per barrel plus 9c per barrel if standard one hundred pound single packages were used for clean rice plus 5c per barrel if cotton or paper interlinings were used. This would make the spread between the rough rice price and clean rice price approximately 89c exclusive of the freight item.

(Sgd.) HOMER L. BRUCE.

Subscribed and Sworn to before me, the undersigned authority, by Homer L. Bruce, this 27th day of October, 1935.

(Sgd.) RAYMOND REILSON,
(Seal) Notary Public in and for Harris County, Texas.

AFFIDAVIT.

State of Louisiana,
Parish of Orleans.

We, L. J. Bartel, R. F. Gould, and J. J. Mayer, each first being duly sworn, deposes and says:

That we are Deputy Collectors of the Treasury Department, Internal Revenue Service, Louisiana District, working in connection with the rice processing tax division, and that the experience of each in the rice industry, prior to becoming Deputy Collectors, is as follows: L. J. Bartel has had actual experience of approximately twenty years in buying rough rice; operation of rice milling plants, and the distribution of milled rice and by-products. R. F. Gould has had actual experience as follows: Fifteen years with the largest rice millers of the industry as Office Manager, and Chief Accountant; one year as Secretary, and auditor of a rough rice buying agency for New Orleans rice mills, and one and one-half years as traveling auditor for the Millers Committee, an agency operating under a Marketing Agreement for the Southern Rice Industry. J. J. Mayer has had approximately seven years actual experience in buying, selling and grading rough rice and distributing milled rice, and by-products. Our broad experience, as above outlined, reveals the following facts as existing in the rice milling industry:

There is no established market price on rough rice, and the method of buying the rough rice by the millers is a competitive bidding method. Each miller has his buyer, who makes the competitive bid on the basis outlined to him by the management of the mill. The basis is as follows: Rice millers determine the price to make their bid to a producer for his rough rice based on the prevailing market price for milled rice

computing the values to the different grades and by-products obtained from the processing of the rough rice being bid upon. *For example:*

A lot (parcel) of rough rice, estimated to produce (per barrel of 162 pounds) the following articles, grades, classes, etc., when processed, with estimated values as set out for each of the respective grades, classes, etc.:

Fancy Head Rice—100 pounds at 4½c	$4.50
Second Head Rice—4 pounds at 3c	.12
Screenings Rice—6 pounds at 2½c	.15
Brewers Rice—2 pounds at 2c	.04
Total yield per barrel—112 pounds.	
Total value	$4.81 plus
Approximate revenue from by-products (25c per barrel of 162 pounds)	.25
Total revenue	$5.06

Competitive bidding basis prior to the processing tax law requiring payment of a processing tax in cash: The above $5.06 is the gross value of milled rice articles and by-products resulting from a 162 pound barrel of rough rice. The mill would deduct from this gross figure the conversion charge, this conversion figure including the mills expense for processing the rough rice, and the estimated profit. Assuming that this conversion would be 60c per barrel, the mill would then bid the producer $5.06, less the 60c conversion, or $4.46 per barrel for the rough rice. The affiants solemnly swear that they have used and seen records of various rice mills establishing the basis as outlined above.

Competitive Bidding Basis after the Processing Tax Law requiring Payment of a Processing Tax in Cash: Since the beginning of the 1933 crop movement, which

become available for market during the month of July, and on which the processing tax applies, the rice millers use the same basis to determine values; however, in addition to deducting the conversion charge, the rice millers deduct also the 1c per pound processing tax on the rough rice, or $1.62 per barrel, and submits his bid to the producer, less this deduction, as follows:

From the value of the same lot of rough rice as above illustrated, estimated to produce milled rice and by-products with gross values of $5.06 per barrel, the rice miller deducts the following: Conversion 60c and processing tax $1.62, or a total of $2.22 per barrel, and makes bid to the producer of $2.84 per barrel for that particular lot of rough rice.

The affiants further solemnly swear that in their practical experience they have prepared, and have seen prepared profit and loss statements for certain given periods other than the entire season; further that these profit and loss statements are prepared on particular lots of rice, which is essential and necessary in their accounting procedure. Should the Agricultural Adjustment Act be held unconstitutional, the affiants state that the rice processors should enjoy the remedy and benefits given by Section 21 (d) of the said Agricultural Adjustment Act, as amended August 27th, 1935, because the records of buying processing and selling kept by the rice mills are adequate enough to properly allocate the cost of various grades of milled rice and its by-products, resulting from the processing of the rough rice; also to properly allocate in this cost, the processing tax, proportionately to the various grades of each lot of milled rice sold by itself alone or mixed. The greater portion of the milled rice sales are straight mill run lots without blending.

The affiants further solemnly swear that they have kept or have seen rice millers' records which reflect correct cost of production, profits from sales, etc., properly allocated to milled rice of various varieties, and grades, and by-products, and similarly allocated as to profits in selling prices, and should the Agricultural Adjustment Act be proven unconstitutional, each rice processor has sufficient records to enable him to recover in accordance with Section 21 (d) of the Agricultural Adjustment Act, as amended.

Summed up, the introduction of the rice processing tax has in no wise altered the customary manner or procedure followed by the rice milling industry in conducting their business.

(Sgd.) L. J. BARTEL,
(Sgd.) R. F. GOULD,
(Sgd.) JAMES J. MAYER.

Subscribed and sworn to before me this 28th day of October, 1935.

(Sgd.) HOMER R. ROBINSON,
Deputy Collector.

DECREE.

Filed October 28, 1935.

(Title Omitted.)

This cause came on today to be heard upon the application of the plaintiff for a preliminary injunction, as well as upon the motion filed on behalf of the

defendant to dismiss the bill of complaint, and was argued by counsel for the respective parties;

Whereupon, and upon consideration thereof, and for the reasons orally assigned;

It is Ordered, Adjudged and Decreed that the application for the Preliminary Injunction be and the same is hereby denied;

It is Further Ordered, Adjudged and Decreed that the plaintiff's petition and bill of complaint in all respects be dismissed.

(Signed) JOHN McDUFFIE, Judge.

New Orleans, Louisiana, October 28, 1935.

MOTION FOR INJUNCTION PENDING APPEAL.

Filed Oct. 29, 1935.

(Title Omitted.)

Comes now the plaintiff in the above entitled and numbered cause and moves the Court to grant plaintiff an injunction pending appeal for the reason that, unless such injunction pending appeal is granted plaintiff, plaintiff will be compelled to pay the taxes referred to in plaintiff's petition before plaintiff's appeal can be determined by the Circuit Court of Appeals, thus causing it great and irreparable injuries. Plaintiff offers to furnish good and sufficient bond by a solvent surety company in an amount to be fixed by

the Court, if the Court should grant its prayer for injunction pending appeal.

BAKER, BOTTS, ANDREWS & WHARTON,
By JOHN P. BULLINGTON.

Motion denied.
(Signed) JOHN McDUFFIE, Judge.

MOTION OF PLAINTIFF FOR APPEAL AND ORDER ALLOWING SAME.

Filed Oct. 29, 1935.

(Title Omitted.)

On motion of plaintiff in the above cause, and on suggesting to the Court that plaintiff is aggrieved by the decree entered by the Court herein on the 29th day of October, 1935, granting defendant's motion to dismiss, and that plaintiff desires to appeal therefrom with a supersedeas and a stay of proceedings in the District Court, pending appeal to the United States Circuit Court of Appeals for the Fifth Circuit, and

On further suggesting to the Court that said decree is contrary to the law and the evidence for the reasons set forth in the assignment of errors filed in plaintiff's behalf herein; and

On further suggesting to the Court that this motion being filed in open Court on the entry of such decree and in the presence of counsel for defendant, no citation of appeal is necessary or need issue herein;

It is Ordered by the Court that the appeal of plaintiff from the decree entered herein to the United States Circuit Court of Appeals for the Fifth Circuit be and the same is hereby allowed with supersedeas, on appellant's furnishing bond with good and solvent surety, conditioned as required by law and to be approved by the Court in the sum of $250.00 said bond to act as a supersedeas, as well as a bond for costs and damages;

It is Further Ordered by the Court that the appeal of plaintiff from the decree entered herein be made returnable to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, on or before November 27th, 1935, and that a certified copy of the record herein be transmitted to said Court of Appeals by the Clerk of this Court, and that no citation of appeal is necessary or need issue herein.

(Signed) JOHN McDUFFIE, Judge.

ASSIGNMENT OF ERRORS.

Filed October 29, 1935.

(Title Omitted.)

Comes now plaintiff and says that, in the record in the proceedings of the said Court in the above entitled cause and in the decree made and entered therein on the 28th day of October, 1935, there is manifest error and for error the said plaintiff assigns the following:

(1) The Court erred in sustaining defendant's motion to dismiss plaintiff's Bill of Comp aint, because such action was contrary to the law and the evidence.

(2) The Court erred in over-ruling and not sustaining plaintiff's motion for a preliminary injunction because said ruling was contrary to the law and the evidence.

Wherefore, plaintiff prays that said Decree be, in all things, reversed, with instructions to the said District Court to grant plaintiff a preliminary injunction.

(Signed) BAKER, BOTTS, ANDREWS & WHARTON,
By JOHN P. BULLINGTON.
Solicitors for Plaintiff.

APPEAL BOND.

Filed October 29, 1935.

Know All Men By These Presents that we, United Rice Mill Products Company, Inc., as principal, and The Aetna Casualty and Surety Company, Hartford, Conn., as surety, are held and firmly bound unto Rufus W. Fontenot, in the full sum of $250.00, to be paid to the said Rufus W. Fontenot, his attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents, sealed with our seals and dated this 29th day of October, 1935.

Whereas, lately, in the District Court of the United States for the Eastern District of Louisiana, judgment was rendered against United Rice Mill Products Company, Inc., and in favor of Rufus W. Fontenot, denying plaintiff's application for a Preliminary injunction and dismissing plaintiff's Bill of Complaint, and the said United Rice Mill Products Company, Inc., having obtained an appeal to reverse said judgment, citing and admonishing the said Rufus W. Fontenot to be and appear at a session of the United States Circuit Court of Appeals for the Fifth Circuit to be holden at the city of New Orleans, La., in said Circuit Court on the 27th day of November, 1935.

Now the condition of the above obligation is such that if the said United Rice Mill Products Company, Inc., shall prosecute its appeal to effect and answer all damages and costs, if it fail to make its plea good, then the above obligation to be void, else to remain in full force and effect.

UNITED RICE MILL PRODUCTS COMPANY, INC.,
(Sgd.) BAKER, BOTTS, ANDREWS & WHARTON,
By JOHN P. BULLINGTON,
Principal.

THE AETNA CASUALTY & SURETY COMPANY,
Surety,
By CARL F. WEISS,
Attorney in Fact. (Seal)

Approved October 29th, 1935.
(Signed) RUFUS E. FOSTER, Judge.

PRAECIPE.

Filed October 31, 1935.

(Title Omitted.)

To the Honorable H. J. Carter, Clerk of the United States District Court for the Eastern District of Louisiana:

You will please include in the record upon appeal in the above entitled cause the following documents and procedures:

1. Plaintiff's original bill of complaint.

2. Defendant's motion to dismiss and answer.

3. Order of Court consolidating causes for trial and providing for evidence in cause No. 324 in Equity, Baton Rouge Rice Mill, Inc., vs. Rufus W. Fontenot, etc., to be considered as evidence in this cause.

4. Affidavit of W. M. Reid.

5. Affidavit of Homer L. Bruce.

6. Joint affidavit of L. J. Bartel, R. F. Gould and J. J. Mayer.

7. Decree of the District Court.

8. Plaintiff's motion for injunction pending appeal and order denying same.

9. Motion and order for appeal.

10. Plaintiff's assignment of error.

11. Appeal bond.

12. This Praecipe.

13. Clerk's certificate.

HOMER L. BRUCE,
JOHN P. BULLINGTON,
BAKER, BOTTS, ANDREWS & WHARTON,
By JOHN P. BULLINGTON,
Attorneys for Plaintiff and Appellant.

Approved:
(Sgd.) ROBERT WEINSTEIN,
Asst. U. S. Attorney, Counsel for defendant.

Clerk's Office:

I, HENRY J. CARTER, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 50 pages contain and form a full, true and complete transcript of the record, assignment of errors and all proceedings in the cause entitled "United Rice Milling Products Co., Inc. vs. Rufus W. Fontenot, Individually and as Collector of Internal Revenue for the District of Louisiana," No. 323 In Equity of the Docket of this Court, as made up in accordance with the Praecipe for Transcript copied herein.

Witness my Hand and the seal of the said Court at the City of New Orleans, La., this 2nd day of November, A. D. 1935.

H. J. CARTER, Clerk,

By H. W. NIEHUES,

(Seal) Deputy Clerk

[fol. 86] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AT NEW ORLEANS, LOUISIANA

No. 7946

UNITED RICE MILLING PRODUCTS CO., INC., Appellant,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Appellee

MOTION FOR PRELIMINARY INJUNCTION PENDING APPEAL—Filed November 4, 1935

Comes now the United Rice Milling Products Co., Inc., appellant in the above numbered and entitled cause, and after due notice given to the appellee above named, respectfully states to the Court that the said appellant on the 25th day of October, 1935, brought a bill in equity in the United States District Court for the Eastern District of Louisiana, New Orleans Division, entitled United Rice Milling Products Co., Inc., plaintiff, v. Rufus W. Fontenot, individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, defendant, and numbered 323 in equity, in the New Orleans Division of said United States District Court. In its bill of complaint in said cause appellant prayed for a temporary re- [fol. 87] straining order to be issued immediately, and for a preliminary injunction after notice to the appellee, and for a permanent injunction on the final hearing of said cause, enjoining the appellee from assessing or collecting or attempting to assess or collect from the appellant in any manner whatsoever, whether by lien or jeopardy or distraint proceedings, in court or otherwise, any processing taxes levied under and pursuant to the Act of the Congress of the United States known as the Agricultural Adjustment Act and amendments thereto, or purported to be levied by said Act, upon the appellant for the processing of rice during the month of September, 1935, and for subsequent months, and any interest or penalty on account of appellant's failure to pay said processing tax, and from impos-

ing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of appellant. That said application for a preliminary injunction was set down for hearing before the Judge of said District Court at New Orleans on Monday, October 28, 1935. The notice thereof was duly waived by the appellee. Prior to said hearing the said appellee filed his motion to dismiss and answer to said bill of complaint, copies of which motion and also of appellant's bill of complaint are contained in the record in this cause filed in this Court.

After a hearing had on appellant's motion for a preliminary injunction and on said motion to dismiss, the Honorable John McDuffie, acting judge of said District Court on October 28, 1935, refused appellant's motion for a preliminary injunction, granted the motion of the appellee to dismiss the said bill of complaint and dismissed the said bill [fol. 88] of complaint, to which appellant herein duly excepted. Thereafter, on the 29th day of October, 1935, the appellant herein in open court and in the presence of counsel for appellee filed its petition for an appeal, which was duly allowed by the said judge of the said United States District Court who tried said cause, and filed at the same time its assignments of errors, and also a cost bond was duly filed and approved by the said judge of said District Court. At the time appellant presented its said petition for appeal, it also petitioned said judge of the District Court to grant it an injunction enjoining the appellee in the manner set out in its request for a preliminary injunction in its bill of complaint, pending the appeal of appellant to this Honorable Court, but the said judge of said District Court on October 29, 1935, refused appellant's said petition and refused to grant appellant said injunction pending said appeal.

Appellant has therefore perfected its appeal to the Circuit Court of Appeals for the Fifth Circuit, making said cause returnable at New Orleans, Louisiana, as provided by law. Appellant has duly caused to be prepared a transcript of the record in said cause and has filed the same, in accordance with law, and within the time allowed by law, in the Clerk's office in the Circuit Court of Appeals at New Orleans, Louisiana.

In said bill of complaint appellant alleged that the amount of processing taxes on account of the rice processed by the

appellant during the month of September, 1935, was $31,839.40, and that under said Agricultural Adjustment Act appellant was required to pay said amount to appellee on or before October 30, 1935, and that appellee was charged with the duty of collecting said tax, and if said tax were [fol. 89] not paid on or before October 30, 1935, appellee would assess said tax against the appellant and serve upon appellant notice and demand for the payment thereof and would allow appellant ten days from receipt of such notice within which to pay the same; that in the event said tax should not be paid within said time, appellee would assess against appellant a penalty equal to 5% of the amount of the tax and interest on the tax at the rate of 1% per month from the due date of the tax until paid; that if the appellant failed to pay the tax within said ten days, appellee would proceed to collect the tax, penalty and interest by filing a notice of lien on all of appellant's property and by distraining upon and selling such of appellant's property as might be necessary to realize the amount of said tax, penalties and interest; and that additional processing taxes for months subsequent to September, 1935, will accrue and be assessed against and collected from the appellant in the same manner as the tax for the month of September.

Appellant alleged that the said processing tax was illegal and unconstitutional, and violated various provisions of the Constitution of the United States in many particulars, more fully set forth in appellant's bill of complaint. The appellant also alleged that under an amendment to said Agricultural Adjustment Act approved on August 24, 1935, a Section 21 (d) was added to said Act, which section provides in substance that appellant should be allowed no recovery of any of said taxes paid, if the same should be illegal or unauthorized, unless appellant established to the satisfaction of the Commissioner of Internal Revenue, and [fol. 90] the Commissioner should so find, that neither appellant nor any person directly or indirectly under appellant's control or having control over appellant, has, directly or indirectly, included such amount in the price of the rice with respect to which it was imposed or of any article processed from the rice with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing rice, and

that the price paid by the appellant or such person for said rice was not reduced by any part of such amount. Appellant in said bill of complaint, alleged, as more fully set out in said bill of complaint, that under said Section 21 (d) it had no adequate remedy at law by which it could recover any part of said taxes if same were unconstitutional and illegal, and that it was impossible, owing to the peculiar conditions existing in the rice milling industry and in the purchase, milling and sale of rice, for appellant to discharge the burden placed upon it by said Section 21 (d), all as more fully set out in appellant's bill of complaint.

Appellant further alleged that in said amendment of August 24, 1935, a new section known as Section 21 (a) was added to said Agricultural Adjustment Act, which in substance provided that no suit to enjoin the collection of said processing taxes should be maintained in any court. Appellant further alleged that said section was not intended to apply, and did not apply, to the injunction prayed for by appellant, inasmuch as appellant had no adequate remedy at law. Appellant further alleged that if said section should be interpreted as prohibiting the injunction [fol. 91] prayed for by appellant, then the said section, together with the other provisions of said Act, was invalid and in violation of the Fifth Amendment to the Constitution, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes would be collected from appellant and appellant would have no remedy by which he could recover taxes and would have no remedy to prevent the collection of said unlawful taxes and would be forever deprived of the right to test the constitutionality of said taxes.

Appellant further alleged that said Section 21 (d) denied the appellant a complete and adequate remedy at law for the various other reasons set forth in said bill of complaint.

At the hearing before the District Judge appellant introduced in evidence the affidavit of W. M. Reid, Executive Secretary of The Rice Millers Association, a man of twenty-six years experience in the rice business, in which affidavit he set out fully and in detail the methods of conducting the rice business and the manner in which the rough rice market and the clean rice market is made, showing that it would be utterly impossible for any rice miller to accurately determine whether he had made a profit or a loss on any

given transaction, much less prove whether he had passed the tax, or any part thereof, on. Appellant also introduced in evidence the affidavit of Homer L. Bruce, a practicing attorney at the bar at Houston, Texas, setting out in detail the proceedings under a complaint brought by the Secretary of Agriculture to revoke the license of a rice mill under the Act in effect prior to the present Act. The Secretary of Agriculture sought to revoke the license of this mill for [fol. 92] failure to sell clean rice and rice products processed from rough rice at a price approximately 79c higher than the price paid for the rough rice. The affidavit showed that although the Government was able to prove the cost of the rough rice and to trace the particular rough rice into various "mixes" of clean rice and the price procured for these "mixes" of clean rice it was never able to prove that the price procured for the clean rice processed from the particular lot of rough rice was not 79c more than the price paid for the rough rice because of the fact that clean rice is customarily sold in "mixes" of various lots of rice and there was no way to allocate the price procured for the mixed rice sold to the various lots of rough rice which went into the mix.

In the meantime, appellant alleges that for the foregoing reasons and those set forth in its said bill of complaint in said cause, and because the judge of said court in his said order dismissed said bill of complaint and refused to grant appellant the injunction prayed for pending the appeal in this case, the appellee herein will, to the irreparable damage and loss of the appellant herein, proceed to collect the said taxes for September, 1935, which are now due and unpaid, from appellant, and said taxes for subsequent months, unless restrained by a preliminary injunction granted by this court. The appellant alleges that not only has it no complete remedy at law, but in fact no remedy at law at all, for the reasons hereinabove set forth and set forth more in detail in said bill of complaint, that it is faced with the alternative of paying the tax with the certainty that no remedy at law exists for its recovery in case it be held that it was unconstitutionally assessed, or of refusing to pay [fol. 93] and running the risk of becoming liable for the heavy civil and criminal penalties provided in the Act, and that the said judge of said District Court should not have dismissed said bill of complaint, but should have over-

ruled the same, and upon the hearing should have granted the preliminary injunction as prayed for in said bill of complaint.

Appellant would further show that there is now pending in the Supreme Court of the United States a case involving the constitutionality of the said Agricultural Adjustment Act, being the same case in which the Circuit Court of Appeals for the First Circuit declared the Act to be unconstitutional, and that the Supreme Court, according to press dispatches, has set said cause for oral argument on Monday, December 9, 1935; that a decision by the Supreme Court of the United States upon the validity of the said Act may be expected within a reasonable time thereafter; that the first benefit payment to farmers provided for in said Act has been made, and that under the standard form of contract between the Secretary of Agriculture and rice farmers no further payment is due until such time after December 1, 1935, as the Secretary shall determine and declare what further amount of benefit payments shall be made and when they shall be made; that the taxes to be collected under said Act are for the purpose of making these benefit payments and that since the Secretary of Agriculture need make no further benefit payments until such time after December 1, 1935, as may be fixed by him, the delay of the Government in collecting these taxes which might be occasioned by the granting of the injunction prayed for herein will not occasion any injury to the Gov-
[fol. 94] ernment nor will it unduly interfere with the achievement of the program set out in said Act if the Act be held constitutional. On the other hand, as hereinabove alleged, great and irreparable damage will be done to plaintiff in the event the law is held unconstitutional unless the injunction hereinafter prayed for is granted.

Appellant further shows that unless an injunction pending appeal be granted so as to preserve the *status quo*, the subject-matter of the suit will be lost and the jurisdiction of this Honorable Court defeated. Such injunction is necessary to preserve the jurisdiction of this Honorable Court, and in order that appellant may enjoy the just fruits of a favorable decision on this appeal.

The appellant states that it is ready and willing to give any reasonable bond or other security that may be required by any order of this Court, including the deposit from

month to month of the amount of tax due, in a depository to be designated by the court, and therefore prays that this Court make an order granting appellant a preliminary injunction enjoining and restraining the appellee from assessing or collecting or attempting to assess or collect from appellant in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in court or otherwise, the said processing taxes for the month of September and subsequent months and any other processing taxes under and pursuant to said Agricultural Adjustment Act upon rice processed by appellant, and any interest or penalty on account of appellant's failure to pay said processing taxes, and from imposing or giving notice of intention to [fol. 95] impose any lien for said taxes upon the property, real or personal, of the appellant, pending the hearing of appellant's appeal in this case and upon such conditions and terms as to this Court may seem just.

Homer L. Bruce. John P. Bullington. Baker, Botts, Andrews & Wharton, of Counsel.

[fol. 96] *Duly sworn to by John P. Bullington. Jurat omitted in printing.*

[fol. 97] In United States Circuit Court of Appeals

No. 7946

United Rice Mill Products Company, Inc.,

versus

Rufus W. Fontenot, Acting Collector of Internal Revenue

Order Denying Motion for Preliminary Injunction Pending Appeal—November 5, 1935

Upon the authority of Rickert Rice Milling Company, Inc., vs. Rufus W. Fontenot, etc., the application for injunction in the above numbered and entitled case is denied.

[fol. 98] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7937

RICKERT RICE MILLING COMPANY, INC., Appellant,

versus

RUFUS W. FONTENOT, Acting Collector of Internal Revenue, Appellee

Appeal from the District Court of the United States for the Eastern District of Lousiana

Motion for Preliminary Injunction Pending Appeal

Before Foster and Sibley, Circuit Judges, and Strum, District Judge

OPINION—November 5, 1935

By the COURT:

On consideration of the application for an injunction to stay collection of taxes levied under the provisions of the Agricultural Adjustment Act, as amended by the Act of August 24, 1935, the Court is of the opinion that the taxpayer has a remedy at law to recover back any taxes illegally [fol. 99] exacted and, further, that the provisions of the Act as amended deprive the Court of jurisdiction to grant injunctive relief.

It is ordered that the application be Denied.

[fol. 100] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 101] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 25, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is

granted, and the case is assigned for argument on Monday, December 16, next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 40,133. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 579. United Rice Milling Products Co., Inc., petitioner, vs. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana. Petition for a writ of certiorari and exhibit thereto. Filed November 11, 1935. Term No. 579, O. T., 1935.

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 580

BATON ROUGE RICE MILL, INC., PETITIONER,

vs.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 11, 1935.

CERTIORARI GRANTED NOVEMBER 25, 1935.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 580

BATON ROUGE RICE MILL, INC., PETITIONER,

vs.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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UNITED STATES OF AMERICA.

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

No. 324 (In Equity).

BATON ROUGE RICE MILL, INC.,

versus

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA.

Appearances:

Messrs. Baker, Botts, Andrews & Wharton, John P. Bullington, Attorneys for Baton Rouge Rice Mill, Inc., Plaintiff—Appellant.

Rene A. Viosca, Esq., United States Attorney and Robert Weinstein, Asst. U. S. Attorney, appearing on behalf of Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Defendant-Appellee.

APPEAL from the District Court of the United States for the Eastern District of Louisiana, to the United States Circuit Court of Appeals for the Fifth Circuit, returnable within thirty (30) days from the 29th day of October, 1935, at the City of New Orleans, Louisiana.

TRANSCRIPT OF RECORD.

BILL OF COMPLAINT & EXHIBITS ANNEXED.

Filed: .....

In the District Court of the United States, Eastern District of Louisiana, New Orleans Division.

Baton Rouge Rice Mill, Inc.,

vs. No. 324 (In Equity).

Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana.

To the Honorable Wayne G. Borah, Judge of the United States District Court, for the Eastern District of Louisiana:

Comes now Baton Rouge Rice Mill, Inc., hereinafter referred to as plaintiff and in the neuter singular, complaining of Rufus W. Fontenot, individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, hereinafter called defendant, and for cause of action shows to the Court as follows:

1.

Plaintiff is a corporation organized under the laws of the State of Louisiana, with its principal office and domicile at Baton Rouge in East Baton Rouge Parish, Louisiana. The defendant is a citizen of the State of Louisiana residing at New Orleans, Louisiana, and is the duly appointed, commissioned, qualified and acting Acting United States Collector of Internal Revenue for the State of Louisiana.

2.

The grounds of jurisdiction of this Court in this case are that this is a suit arising under the Constitution of the United States and the laws of the United States, in of the United States and the laws of the United States, in which the matters in controversy exceed Three Thousand Dollars ($3,000.00), and this suit is also one in which an injunction is sought against an official of the United States to prevent him from unlawfully collecting processing taxes levied by the United States pursuant to certain acts of Congress, more fully set out hereinafter, and to have declared invalid and unconstitutional said acts of Congress in so far as they attempt to provide for the levy, assessment and collection of said processing tax.

3.

Plaintiff is engaged in the business of milling rice and owns and operates a rice mill at Baton Rouge, Louisiana. The milling of said rice, which constitutes processing of said rice under the terms of the Agricultural Adjustment Act, hereinafter referred to, is done wholly within said State and is a matter of intrastate commerce exclusively, being performed in its entirety within the limits of said State wherein plaintiff's rice mill is established and operated.

4.

There was adopted by the 73rd Congress and approved on May 12, 1933, an Act, P. L. No. 10, popularly known as the "Agricultural Adjustment Act," but officially entitled:

"An Act to relieve the existing national Economic emergency by increasing agricultural purchasing power,

to raise revenue for extraordinary expenses incurred by reason of the emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint stock land banks, and for other purposes."

and said Act with its amendments, for convenience hereinafter, will be referred to by its popular title, namely, the Agricultural Adjustment Act.

Said Agricultural Adjustment Act has been amended several times and particularly by an amendment approved August 24, 1935, which amendment is hereinafter referred to as the Amendment of August 24, 1935.

5.

The policy to be effectuated by the enactment of said Act, prior to the Amendment of August 24, 1935, was declared by Congress in Section 2 to be as follows:

"It is hereby declared to be the policy of Congress—

(1) To establish and maintain such balance between the production and consumption of argicultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. The base period in the case of all agricultural commodities except tobacco shall be the prewar period, August 1909-July 1914. In the case of tobacco, the base period shall be the postwar period, August 1919-July 1929.

(2) To approach such equality of purchasing power by gradual correction of the present inequalities there-

in at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets.

(3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the prewar period, August 1909-July 1914."

By said Amendment of August 24, 1935, Subsection (1) of said Section 2 was amended by inserting at the beginning thereof the words

"Through the exercise of the powers conferred upon the Secretary of Agriculture under this title."

and Subsections (2) and (3) were stricken out and the following inserted in lieu thereof:

"(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section."

Plaintiff alleges that under no provision of the Constitution of the United States is the Congress of the United States authorized to provide for said processing taxes for the purpose of accomplishing any of

said policies above set forth, and the levy, assessment and collection of said taxes have been provided for in said Act, not for the purpose of raising revenue, but for the purpose of accomplishing the things set out in said declaration of policy of Congress and for said reasons the levy, assessment and collection of said taxes are wholly illegal, unlawful and unwarranted under the Constitution of the United States.

6.

Section 8 of said Agricultural Adjustment Act provides in substance that, in order to effectuate the declared policy of the Act, the Secretary of Agriculture shall have power to provide for a reduction and adjustment in the acreage and production for market, or both, of any basic agricultural commodity, including rice, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith, in such amounts as the Secretary finds best calculated to effectuate the declared policy of the Act, to be paid out of the moneys hereinafter referred to.

Section 9(a) of said Agricultural Adjustment Act levies the processing taxes thereinafter provided. It then provides that when the Secretary of Agriculture determines that any one or more payments (including said rental or benefit payments) authorized to be made under Section 8 of said Act or to be made with respect to any basic agricultural commodity, he shall proclaim such determination and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation. Said Act, however. provided that with respect to rice the processing tax for the period from April 1, 1935, to July 31, 1936, should be at the rate of 1c

per pound of rough rice. Under a similar provision of said Act before being amended by the Amendment of August 24, 1935, the Secretary was directed to proclaim, and did proclaim, before April 1, 1935, that rental or benefit payments would be made with respect to rice and the processing tax of 1c per pound of rough rice would be in effect on and after April 1, 1935.

Section 9(b) of said Agricultural Adjustment Act provides that the processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, as those terms are defined in the Act, plus such percentage of such difference, not to exceed 20 per centum, as the Secretary may determine, will result in the collection in any marketing year of an amount of tax equal to (A) the amount of credits or refunds which he estimates will be allowed during such period with respect to the commodity and (B) the amount of the tax which he estimates would have been collected during such period upon all processings of such commodity exempt from tax because such processings are done by or for a State or a political subdivision or an institution thereof, except that the processing tax on rice for the period above mentioned should be at the rate of 1c per pound of rough rice.

Section 12(a) of said Act, prior to the Amendment of August 24, 1935, appropriated the sum of $100,000,000.00 to be available to the Secretary of Agriculture for administrative expenses under Title 1 of said Act and for rental and benefit payments made with respect to reduction in acreage or reduction in production for market under Part 2 of said Title 1. Section 12(a) of said Act, after said amendment, appropriated the said sum of $100,000,000.00 to the Secretary for administrative expenses under Title 1

and for payments authorized to be made under Section 8, including said rental and benefit payments made with respect to adjustment and reduction in acreage or production for market of basic agricultural commodities, including rice.

Section 12(b) of said Act, prior to said Amendment of August 24, 1935, provided that, in addition to said $100,000,000.00, the proceeds derived from all processing taxes imposed under said Title 1 were appropriated to be available to the Secretary of Agriculture for expansion of markets and removal of surplus agricultural products and administrative expenses, rental and benefit payments, and refunds on taxes. Section 12 (b) of said Act as amended by said Amendment of August 24, 1935, provided that, in addition to said $100,000,000.00 a further sum was appropriated to be available to the Secretary of Agriculture for payments authorized to be made under said Section 8, including said rental and benefit payments, said sum so appropriated to be equal to the proceeds derived from all processing taxes imposed under said Act.

7.

Acting pursuant to the purported authority given to him under said Agricultural Adjustment Act, the Secretary of Agriculture under date of April 18, 1935, through R. G. Tugwell, the then acting Secretary of Agriculture, promulgated certain rulings relating to the 1935 Southern Rice Production Adjustment Program, a copy of which rulings is attached hereto as Exhibit A and made a part hereof as if fully copied herein at this point. Under said rulings the Secretary of Agriculture allotted acreage to be planted in rice and barrels of rice to be produced. (a barrel being defined as being one hundred sixty-two pounds of rough rice)

in the States of Arkansas, Louisiana and Texas as follows:

	Acres.	Barrels.
Arkansas	135,000	1,834,722
Louisiana	364,500	3,898,333
Texas	142,500	2,010,833

Said rulings provided for a State Committee appointed by the Secretary of Agriculture for each State and for various forms and applications to be filled out by those desiring to produce rice and to be filed with the said State Committee. Said rulings provided that the base period for Texas should be the years 1931 to 1933, inclusive, and for Arkansas and Louisiana should be the years 1929 to 1933, inclusive. Said rulings further provided that the said State Committee should make an allotment to a producer applying to the Secretary of Agriculture through said State Committee for permission to grow rice during the year 1935, by taking the average acreage planted by such producer during the base period applicable to him and by reducing this result by 20% in Arkansas and in Louisiana and by 22% in Texas; and should give an allotment or permission to said producer to plant said 80% (in the case of Arkansas and Louisiana) or 78% (in the case of Texas) of the average acreage planted by him during said base period. Said rulings further provided for said State Committee to allot to each such producer a quota of barrels of rice that he might produce during the year 1935 by allotting to him 80% (if in Arkansas or Louisiana) or 78% (if in Texas) of the average number of barrels of rice raised by him during said base period.

If a producer had produced rice during any of the years constituting his base period, he was eligible to obtain an allotment and a quota from said State Committee, and if he should obtain such allotment and

quota, he was then eligible to execute a contract with the Secretary of Agriculture in the form shown by Exhibit B attached hereto and made a part hereof for all purposes as if copied in full at this point. If said producer executed said contract and it was accepted by the Secretary, he was then eligible for the benefit payments to be made by the Secretary as provided for in said agreement. However, if a producer had not produced rice during any of the years constituting his base period, he was not eligible to execute said contract with the Secretary and was not eligible for the benefit payments provided for therein. Likewise, if a producer did not execute such contract, or if he executed such contract and it was not accepted by the Secretary, he was not eligible for the benefit payments as provided for therein.

Plaintiff alleges that said processing taxes were not levied under the taxing power of the United States and for the purpose of raising revenue, but were levied for the purpose of raising money with which the Secretary of Agriculture could make rental or benefit payments to producers of agricultural products, including rice, and for the purpose of controlling, regulating, and reducing the amount of acreage that would be planted to rice and the amount of rice that would be grown, and to accomplish the purposes set out in Section 2 of said Act, and that the Congress of the United States had no authority under the Constitution of the United States to levy said processing taxes for said purpose and for said objects.

8.

Section 8 further provides that, in order to effectuate the declared policy of the Act, the Secretary is empowered to provide for a reduction in acreage or a reduction in production of any

basic agricultural commodity through agreements with producers, and to provide for rental or benefit payments in connection therewith in such amounts as the Secretary deems fair and reasonable, but there is no standard or measure established or provided in said Act by which the said Secretary shall be guided in providing for said reduction in acreage or production or in the amount of the rental or benefit payments, and said provisions are wholly invalid and violative of Article 1 of the Constitution of the United States which vests all of the legislative power in the Congress of the United States and is an invalid and unconstitutional delegation of legislative power by Congress to the Secretary of Agriculture.

Plaintiff further alleges that the Secretary has made no findings whatsoever, and if he has made any such findings, they are wholly insufficient to support his action in providing said method of reduction of acreage and production of rice as above set forth, and his said regulations and provisions concerning said reduction of acreage and reduction of production and amounts of benefit payments are wholly arbitrary and unsupported by any findings, or at least any sufficient findings, by the Secretary of Agriculture and are not authorized by said Act or the Constitution of the United States.

9.

Section 9(b) of said Act provides that if the Secretary of Agriculture has reason to believe that the processing tax levied on any commodity will cause such reduction in the quantity of such production domestically consumed as to result in the accumulation of surplus stock thereof or in the depreciation of the farm price of the commodity, then he shall cause an investigation to be made on due notice and opportunity for hearing to interested parties, and if thereupon the

Secretary finds that such result will occur, then the processing tax on such commodity shall be at such rate as will prevent such accumulation of surplus stock and depreciation of said farm price. Said provision applies to the processing tax levied upon rice. Said provision sets no proper standard by which the Secretary shall be guided in determining the rate of the processing tax on rice or how long said tax of one cent (1c) per pound shall remain on rice, and the continuation of said processing tax being dependent upon said action by the Secretary, said provision is an unconstitutional delegation of legislative power to the Secretary of Agriculture in violation of Article 1 of said Constitution vesting the legislative power in the Congress, and for said reasons the said Act in levying said processing tax is void and illegal.

10.

In addition to the foregoing reasons, the said Agricultural Adjustment Act and its provisions for the levying, assessment and collection of said processing taxes upon rice processed by this plaintiff are void, illegal and in violation of the Constitution of the United States for the following reasons:

1. They are an attempt and effort by the United States to regulate, control and reduce the production of certain agricultural commodities specified in said Act, including rice. The so-called processing taxes imposed by said Act are an integral part of the scheme, attempt and effort of regulating, controlling and reducing the production of such commodities, which attempt, effort and scheme is not within the scope of any of the powers vested in the Congress by the Constitution, and if said power exists as a governmental function, it is therefore within the powers reserved to the States as expressly provided by the Tenth Amendment to the Constitution.

2. The so-called processing taxes were not imposed under or in conformity with the power vested in the Congress by Section 8 of Article 1 of the Constitution to levy and collect taxes, duties, imposts and excises, in that they are not imposed to pay the debts or to provide for the common defense or the general welfare of the United States, but were imposed for the benefit of a particular class of individuals, namely, the producers of the various agricultural commodities specified in said Act who conform to the conditions laid down in said Act.

3. The said Act and provisions for the levy, assessment and collection of said processing taxes violates the provisions of the Fifth Amendment to the Constitution since the so-called processing taxes constitute the deprivation of the property of one class of citizens, including the plaintiff, namely, processors of said specified commodities, including rice, without due process of law, in that such processing taxes constitute the taking of the property of this class of citizens, including the plaintiff, not for a public purpose but for a private purpose, to-wit, the payment of gratuities or bounties or benefit payments to another class of persons, namely, the producers of the designated agricultural commodities, including rice, and particularly since this taking is without just compensation to the plaintiff and said processors.

4. Said so-called processing taxes levied by the Act are taxes in name only and not in fact. They constitute merely an exactment and imposition by the Government for the purpose, not of raising revenue for the support of the government, but of raising the price for farm products and adjusting farm income and for carrying out the policy of said Act as hereinabove set forth and for the purpose of enabling the government to carry out and effectuate the said attempt, effort and scheme of the United States as hereinabove set out.

5. Under the terms of Article 1, Section 1, of the Constitution of the United States, the legislative powers granted to the Federal Government are vested in the Congress; whereas, the said Act purports to vest powers in the Secretary of Agriculture, who alone is to determine, at his own discretion and without any definite standard fixed by Congress, the method of bringing about a reduction or adjustment in acreage and production of agricultural commodities, including rice; to provide for rental or benefit payments in connection therewith in such amounts as the Secretary may deem fair and reasonable; to determine how long the said tax of 1c per pound upon the processing of rice shall remain in effect, and if the Secretary changes said rate, what rate shall be fixed. In said respects the said Act involves an invalid delegation to the Secretary of Agriculture by Congress of powers vested exclusively in it by the Constitution and because of said things the said Act delegates said legislative powers to the Secretary of Agriculture and said powers are conferred exclusively on Congress by said Article 1, Section 1; Article 1, Section 8, clause 18; Article 11, Section 1; Article 1, Section 7, clause 1; and Article 1, Section 9, clause 7 of the Constitution.

6. The said taxes if construed as direct, violate Article 1, Section 9, clause 4, and Article 1, Section 2, clause 3 of the Constitution, because not apportioned according to population.

7. The said taxes are not excise taxes, and are not uniform throughout the United States as required by Article 1, Section 8, clause 1.

8. The said alleged taxes cannot be levied under Article 1, Section 8, clause 3, regulating commerce, because neither the production nor processing of commodities, including the processing of rice done by plaintiff, is in interstate commerce and cannot be regulated

by Congress and in so far as this plaintiff is concerned, its processing of said rice is not interstate commerce and cannot be regulated by Congress.

11.

Under the terms of said Act and orders of the Secretary of Agriculture and the Secretary of the Treasury, the plaintiff is required to file returns with the defendant on or before the 30th day of October, 1935, showing the amount of rice processed by the plaintiff during the month of September, 1935, and the amount of said so-called processing tax on account of said rice processed by the plaintiff during said month, and plaintiff is required to pay said amount to the defendant on or before October 30, 1935. The amount of said processing taxes on account of the rice processed by the plaintiff during said month of September is $51,259.14. The defendant as said Collector of Internal Revenue is charged with the duty of collecting said tax, and if the plaintiff does not make said payment on or before October 30, 1935, the said defendant will assess said tax against the plaintiff and will serve upon the plaintiff notice and demand for the payment of said tax, and the plaintiff will be allowed ten days from the receipt of such notice and demand within which to pay said tax. In the event of failure to pay said tax within said time, the defendant will assess against the plaintiff a penalty equal to 5 per centum of the amount of the tax and interest on the tax at the rate of 1 per centum from the due date of the tax until it is paid; if plaintiff fails to pay said tax within the ten days after receipt of said notice and demand, the defendant will proceed to collect the tax, penalty and interest by filing a notice of lien upon all of plaintiff's property, and by distraining upon and selling such of plaintiff's property as may be necessary in order to realize the amount of said tax, penalties and interest. Additional processing taxes for the months sub-

sequent to September, 1935, will accrue and will be assessed against and collected from plaintiff, just as the processing tax for the month of September will be, in the manner described, unless the defendant is restrained and enjoined from assessing and collecting said taxes. Plaintiff has its rice mill at the place stated in paragraph 3 hereof with a large inventory of rough rice and clean rice, bank accounts and cash on hand. Repeated levies upon and distraint of its property from month to month will cause plaintiff irreparable injury and damage, in that such levies and distraints will impair the valuable good-will of its business; will seriously interfere with, if not prevent, the actual operations of its plant and the sales of its product; and will result in a permanent injury to its business and good-will. Furthermore the tax, if once paid by plaintiff, will be irretrievably lost to plaintiff, to its great and irreparable injury.

12.

Plaintiff further shows that by the Amendment of August 24, 1935, Section 30, of said amendment added a new section to the Agricultural Adjustment Act designated as Section 21, a copy of which Section 21 is attached hereto and marked Exhibit C. Plaintiff does not have an adequate and complete remedy at law as to taxes levied and assessed under said Act because of the provisions of Section 21(d) of said Agricultural Adjustment Act. Under Section 21(d) a recovery will not be allowed to the plaintiff for any amount of the tax paid by plaintiff unless it shall be established that the plaintiff has not directly or indirectly included such amount in the price of the rice with respect to which it was imposed or passed on any part of any such amount to the vendee, or included any part of such amount in the charge or fee for processing, and that the price paid by the plaintiff for rough rice was not reduced by any part of such amount.

Plaintiff states that it is an impossibility to prove or attempt to prove what portion, if any, of the processing taxes paid by it has been either deducted from the purchase price of rough rice or added to the selling price of clean rice for the following reasons:

Rice millers buy rough rice at the market price, a price that is established by the competitive bidding of the many rice millers. Rough rice is bought in large quantities and kept on an average of several months before the clean rice made from it is sold, and because of said facts the miller has no way of definitely knowing at the time of the purchase of rough rice whether he will make a profit or loss on the milling and selling of rice. A major factor in determining the market price of rough rice is the market price of clean rice at the time the rough rice is bought but there is no assurance, however, that the market price for clean rice will be the same at the time the miller actually sells the clean rice milled from the rough rice.

The miller who buys rough rice must pay the market price as established under these conditions, and has no power to fix or make the market price himself. Having no power to make prices, he cannot arbitrarily depress the market price of rice in order to pass the processing tax back to the producer.

Likewise, the miller sells the clean rice in competition with many other rice millers, and also in competition with many other food products, such as wheat, potatoes, beans and other food products, that can be substituted for rice. Under such circumstances, if the price of clean rice is pushed too high, consumers will shift to other products with the result that the demand for rice will decline until the price of rice falls to where people will buy it instead of other competitive commodities. Under these circumstances the rice miller cannot fix or make

the price for clean rice, and cannot arbitrarily increase the price of clean rice in order to pass the processing tax on to the purchaser of clean rice.

In addition, rough rice when milled produces many grades of rice and products thereof. It produces extra fancy head rice, fancy head rice, head rice, second head rice, screenings, brewers, polish, bran, and hulls, all of which commodities have varying values, extra fancy rice being the most valuable and the other grades being of less value in the order above set forth. Extra fancy, fancy, head and second head rice are generally sold for human consumption as rice. Screenings are sold to some extent for direct consumption by human beings. Brewers and screenings are a very low priced commodity and are used in general by breweries. Polish, bran and hulls are sold generally for stock feed. Some of such products, particularly brewers, polish, bran and hulls are sold practically always for a less price per pound than is paid for the rough rice per pound. There is no definite proportion by which the price paid for rough rice can be allocated in any way to these different grades of rice; so that it is impossible to tell with any degree of accuracy how much the rice and rice products that have been produced from any particular lot of rough rice have cost, making it impossible to tell what amount of the processing tax, if any, has been passed on to the purchaser of these articles.

Furthermore, the processing tax is levied upon the first processing of the rough rice and must be paid by the end of the calendar month following the month in which the processing occurred. On the other hand, when a lot of rough rice has been processed in any month, some of the grades may be sold immediately, whereas some of the other grades produced from said rice may be kept for several months before being sold, and it is thus impossible to tell how much has been

received for the clean rice and its products that are produced from any month's processing, and it is impossible to tell how much, if any, of said processing tax has been passed on to the purchaser of said clean rice.

Indeed, it is impossible even to determine whether, for any given month, the mill operations have resulted in a gain or loss and it is only at the end of the season that a gain or loss *for the season* can be determined.

In addition, in the cost of rough rice processed during any month, there is an additional item of the cost of the milling of such rice. The cost of milling rice depends upon many factors so that it is impossible to determine what has actually been the cost of milling any particular lot of rice. There are many varieties of rice, some of which have longer grains than others. Different processes of milling must be used for each different kind and variety of rice, and where the plaintiff and other millers have on hand varied and sundry varieties and kinds of rice it is necessary in the operation of the mill to change quickly from one kind of rice to another as the milling of one lot of rice is completed and the milling of another kind begun. In addition, lots of rice of the same variety will vary the one from the other due to the varying amounts of moisture in the rice, varying conditions under which the rice was harvested, and many other factors, which makes it necessary to vary the operation of the rice mill in many respects as between lots of rice. In addition, the output of a mill in barrels per day varies because of all these factors very considerably. Under all the circumstances, it is impossible for a mill to determine the cost to it of the milling of any particular lot of rice, which cost must necessarily enter into a deter-

mination of whether in selling the clean rice it has included any part, or what part, of the processing tax in the price for which it sells its clean rice and rice products.

In addition, owing to the peculiar nature of the rice business and the customary manner of selling rice that prevails in the rice industry, it is impossible for the plaintiff and other rice millers to determine the cost of any particular rice that has gone into the clean rice that is covered by any particular sale. The clean rice that is obtained from any particular lot of rough rice is not sold in the trade by itself alone. At the beginning of the season plaintiff and other rice mills know approximately the different kinds of rice that they will have during the season. In the early part of the season and as the season progresses, plaintiff and other millers make up samples of rice of the kind that they have determined they will be able to supply during the season. Owing to the varied character of clean rice out-turn from rough rice, these samples are made up of mixtures of different kinds of rice. It has been found impossible to make up such samples entirely of one kind of rice from one lot of rough rice as it is impossible to match in any appreciable quantity a sample of one lot of clean rice with another lot of clean rice. Clean rice is sold on these samples and when an order is obtained for a given amount of clean rice of a certain sample, the plaintiff and other rice millers then find what different lots of clean rice they have on hand which by mixing will produce the samples upon which the sale has been made. As a result, when a sale of clean rice is made, the order is filled by a mixture of clean rice which is made up from many different lots of clean rice. These different lots of clean rice have been milled from different lots of rough rice for which different prices have been paid. As a result the rice that goes into a clean

rice sale has come from many different sources and has been milled under many different conditions and it is impossible to tell exactly the cost of such clean rice under the circumstances. In addition, part of the clean rice obtained from a lot of rough rice may be carried for many months and mixed on different sales with innumerable combinations of other lots of clean rice so that it is impossible to trace through the history of rice processed during any month to determine what price was obtained for it, whether it was sold at a profit or a loss, and what part, if any, of the processing tax has been passed on to the purchaser.

Furthermore, there is no way in which the cost of a lot of rough rice can be allocated between the various grades of rice and the various rice products produced from such lot except by speculation for the use of arbitraries.

In short, it is impossible to determine, statistically or otherwise, where the ultimate burden of the processing tax falls—how much of it is paid by the consumer, how much by the producer, or how much by the processor.

In view of the above facts, the purported remedy given by Section 21(d) of said Agricultural Adjustment Act is wholly inadequate and is in fact a statutory denial of any legal remedy at all.

13.

In addition, the conditions imposed upon the right of the plaintiff to recover taxes paid by it must, under Section 21(d) be established to the satisfaction of the Commissioner of Internal Revenue, and no provision is made for judicial review. The transcript of the hearing before the Commissioner of Internal

Revenue is the sole record of the case on appeal to the Courts. The effect of such section is therefore to limit the function of the judicial review to the determination of whether there was any evidence submitted to the Commissioner of Internal Revenue tending to support the findings of the Commission. Said Section 21(d) therefore deprives the plaintiff of its property without due process of law in violation of the Fifth Amendment to the Constitution.

14.

Under said Section 21(d) of said Agricultural Adjustment Act, if the processing tax has been either passed on or passed back by the plaintiff, then the plaintiff cannot maintain any action to recover the tax, if it is ultimately determined to be invalid, either for its own account or for the account of the persons to whom the processing tax has been thus passed on or passed back by the plaintiff; nor can the persons to whom the processing tax has been thus passed on or passed back maintain such an action on their own account, but all right of action by anyone to recover the tax, if it has been passed on or passed back, has been wholly taken away by said amendments to said Agricultural Adjustment Act. Moreover, Section 21(a) of said Act and Section 405 of the Revenue Act of 1935 deprive the Courts of power to render declaratory judgments with respect to such alleged taxes. By reason of the impossibilities of proof hereinabove referred to, the practical effect of said Act will be to deny taxpayers and the plaintiff all means of securing a judicial decision as to the constitutionality of the processing taxes, unless the Court grants the relief herein sought.

15.

Plaintiff further shows that by Section 30 of said Amendment of August 24, 1935, Section 21(a) was

added to said Act, which in substance provides that no suit to enjoin the collection of any tax imposed by said Act shall be maintained. Plaintiff alleges that said section is not intended to apply, and does not apply, to the injunction prayed for by this plaintiff inasmuch as plaintiff has no adequate remedy at law. Plaintiff alleges, however, that if said section should be interpreted as providing that no injunction should be granted to the plaintiff as prayed for in this cause, then the said section, together with the other provisions of said Act, is invalid and in violation of the Fifth Amendment to the Constitution of the United States, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes will be collected from the plaintiff and the plaintiff will have no remedy to prevent the collection of said unlawful taxes, and will be forever deprived of the right in any manner to test the constitutionality of such taxes.

16.

Said Section 21(d) further denies to the plaintiff a complete and adequate remedy at law, because a multiplicity of claims and suits would be required to enforce such rights as are granted thereunder and because said subsection requires that the facts required to be proved thereunder be established to the satisfaction of the Commissioner of Internal Revenue and makes no provision for a judicial review of his decision.

17.

A refund of processing taxes paid by the plaintiff could not actually be obtained even if it were possible for the plaintiff to prove the negative facts required by subsection (d) of Article 21, because Congress has

not appropriated funds for the payment of such refunds and plaintiff believes, that in view of the aggregate amount involved, there is a reasonable doubt whether such appropriation would ever be made.

18.

Plaintiff is ready, able and willing and hereby offers and agrees that in the event the injunctive relief herein prayed for is granted, it will deposit at such time and in such manner as this Court shall direct the said sums claimed to be due from plaintiff for processing taxes on account of the rice processed by plaintiff during the month of September, 1935, and the plaintiff further offers and agrees that at the end of each month hereafter it will file processing tax returns with the defendant as required by existing laws and regulations and that as and when processing taxes under said returns become due and payable according to existing laws and regulations or any extension lawfully granted to the plaintiff, it will deposit the amount of such taxes in such manner as the Court may direct, all such deposits to abide the final decree in this cause.

Wherefore, plaintiff being without an adequate remedy at law prays:

1. That process issue and be served upon the defendant requiring him to appear and answer this bill, but not under oath, and answer under oath being hereby expressly waived;

2. That pending the hearing of the application for a preliminary injunction hereinafter prayed for, a temporary restraining order issue immediately enjoining and restraining the defendant until the hearing of its application for a preliminary injunction or until

the further order of this Court, from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in Court or otherwise, any processing taxes under and pursuant to said Agricultural Adjustment Act and any interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

3. That notice issue to the defendant advising him that plaintiff is hereby applying for a preliminary injunction and that plaintiff's said application will be heard at a time to be fixed by the Court in said notice, and that upon said hearing a preliminary injunction pending the final disposition of this case be issued enjoining and restraining the defendant from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in Court or otherwise, any processing taxes under and pursuant to said Agricultural Adjustment Act and any interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

4. That at the final hearing of this cause said preliminary injunction shall not have been granted, then that a permanent injunction be granted permanently restraining and enjoining the defendant from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in Court or otherwise, any processing taxes under and pursuant to said Agricultural Adjustment Act and any

interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

5. That at the final hearing it be adjudicated that the provisions of said Agricultural Adjustment Act providing for the levying, assessing and collecting of said processing taxes against and from the plaintiff are invalid, unlawful and unconstitutional on each and every one of the grounds upon which they are hereinabove alleged to be unlawful, invalid and unconstitutional; and that the defendant has no lawful right to attempt in any manner to collect said processing taxes from the plaintiff or any of the penalties or interest thereon purported to be provided for in said Agricultural Adjustment Act;

6. And plaintiff prays for such other and further relief, both general and special, to which it may be justly entitled.

(Signed) FELIX J. JUMONVILLE,
(Signed) JOHN P. BULLINGTON,
HOMER L. BRUCE,
(Signed) BAKER, BOTTS, ANDREWS & WHARTON,
By JOHN P. BULLINGTON,
Attorneys for Plaintiff.

State of Louisiana,
Parish of East Baton Rouge.

Before me, the undersigned authority on this day personally appeared Felix J. Jumonville, who having been by me first duly sworn, stated on oath that he is the President of Baton Rouge Rice Mill, Inc., a corporation plaintiff in the above cause, and that he has been duly authorized by said corporation to make this

affidavit for and in its behalf; that he has read the foregoing and above bill and knows the contents thereof and that the facts therein set out are true, except as to such facts as are therein stated on information and belief, and that as to those facts so stated to be on information and belief, he believes them to be true.

(Signed) FELIX J. JUMONVILLE.

Subscribed and sworn to before me this 25th day of October, 1935.

(Signed) HANNIS T. BOURGEOIS,
Notary Public in and for
East Baton Rouge Parish,
Louisiana.

(Seal)

EXHIBIT "A."

Filed October 25, 1935.

Issued April 18, 1935.

United States Department of Agriculture,
Agricultural Adjustment Administration.

Administrative Rulings Relating to the 1935 Southern Rice Production Adjustment Program.

Explanation.

These Administrative Rulings apply to and are part of the Southern Rice Production Adjustment Contract and documents pertaining thereto.

If any of the provisions are not understood, the Community or County Committee should be consulted. No producer should make out and submit to his Community or County Committee an Application or a Contract or other documents pertaining thereto with-

out knowing exactly what he must do in order to receive the benefits of the program.

I. Definitions.—As used in the Southern Rice Production Adjustment Application, Declaration, Contract, Schedule, and these Administrative Rulings:

(a) "Person," "tenant," "landlord," "producer," and "well or canal operator," include individuals, copartnerships, and corporations; and where it is required by the context, the singular shall include the plural.

(b) "Farm" means one contiguous tract of land operated as one unit substantially separate from any other such tract of land.

(c) "Producer" includes persons owning and operating their own farms; tenants operating farms rented for cash; tenants operating farms under a crop-share lease, contract, or agreement; landlords leasing to share tenants; corporations, copartnerships, or individuals furnishing water for production of rice on a share basis; and such other persons or classes of persons as the Secretary may determine to be eligible to sign Southern Rice Production Adjustment Contracts.

(d) "Participation in the production of rice" means sharing as a producer in any manner in the production of rice on a farm.

(e) "Farming Operation" means the production of rice or the participation in the production of rice by a producer.

(f) "Application" means any Application for Rice Acreage Allotment (forms Rice 1 and 2) heretofore or hereafter executed by any producer. "Application

serial number" means the serial number of any such Application.

(g) "Declaration" means any 1935 Southern Rice Declaration of Farm Acreage (form Rice 30) heretofore or hereafter executed by any producer. The "farm serial number" means the serial number of any such Declaration.

(h) "Schedule" means any Producer's Schedule of Rice Acreage (Form Rice-37) heretofore or hereafter executed by any producer. Each such Schedule shall bear the same serial number as the Contract executed by the producer who executes the Schedule.

(i) "Contract" means any 1935 Southern Rice Production Adjustment Contract (Form Rice-36) heretofore or hereafter executed by any producer. The "Contract serial number" means the serial number of any such Contract.

(j) "1935" means the period from January 1, 1935, to December 31, 1935.

(k) "1934" means the period from January 1, 1934 to December 31, 1934.

(l) The term "State base period" means the period of calendar years 1929 to 1933, inclusive.

(m) The "State Allotment" shall be 135,000 acres for Arkansas, 364,500 acres for Louisiana, and 142,500 acres for Texas. The "State Quota" shall be 1,834,-722 barrels for Arkansas, 3,898,333 barrels for Louisiana, and 2,010,833 barrels for Texas.

(n) The term "base period" in Arkansas and Louisiana means the period of the calendar years

1929 to 1933, inclusive, and in Texas the years 1931 to 1933, inclusive.

(o) The "production history" of a producer means, as the context may require, the producer's rice acreage or rice production, or both, for the base period as adjusted to the official figures and accepted by the State Committee.

(p) The "producer's Allotment" and the "producer's Quota" means respectively the rice acreage and the rice production assigned by the State Committee, acting for and on behalf of the Secretary, to the producer for 1935 and determined according to the procedure set forth in Administrative Ruling II hereof.

(q) The "acreage allocated" by the producer means that part of a producer's allotment which, in a Declaration, he allocates to a given farm as a basis for determining his share of the total rice acreage planted on that farm in 1935.

(r) "Producer's share of the rice acreage planted" and the "Producer's share of the acreage planted to rice in 1935" each means with respect to any farm, that acreage which bears the same ratio to the total rice acreage planted on that farm in 1935 (as determined upon checking compliance with the Contract in the manner prescribed by the Secretary) that the acreage allocated by the producer to that farm in a Declaration bears to the total rice acreage allocated to that farm in such Declaration.

(s) The "Secretary" means the Secretary of Agriculture of the United States.

(t) "Rice Section" means the Rice Section of the Agricultural Adjustment Administration.

(u) "Official figures" means the records of acreage and production prepared by the United States Department of Agriculture.

(v) A "barrel" means 162 pounds of rough rice.

(w) A "bushel" means 45 pounds of rough rice.

II. Determination of Allotments and Quotas.—1. The allotment of a producer shall be determined by each State Committee as follows: (a) Add the acreage of rice planted annually by each producer for his own account during the base period, after adjustment of acreage of all producers to the official figures for each state for each of the years of the base period; (b) Divide the total thus secured by five (5) in Louisiana and in Arkansas, and the total thus secured by three (3) in Texas; (c) Reduce the result obtained by 20 per cent in Louisiana and in Arkansas and the result obtained by 22 percent in Texas.

The total allotments assigned to producers in each state shall not in any event exceed the state allotment for that state.

2 The quota of a producer shall be determined by each State Committee as follows: (a) Add the number of barrels of rough rice produced annually by each producer for his own account during the base period, after adjustment of the production of all producers to official figures for each state for each of the years of the base period; (b) Divide the total thus secured by five (5) in Louisiana and in Arkansas, and the total thus secured by three (3) in Texas; (c) Reduce the result obtained by 20 percent in Louisiana and in Arkansas and the result obtained by 22 percent in Texas.

The total quotas assigned to producers in each state shall not in any event exceed the state quota for that state.

3. If the total of allotments and quotas determined according to the provisions of sections 1 and 2 of this numbered ruling, in any state, is less than the State Allotment and State Quota such excess may be allocated to producers by the State Committee, subject to approval by the Secretary or his authorized agent.

4. The Allotment and Quota are based upon the personal production history of the producer, regardless of where the rice was produced and are the measure of such history. The producer's production history shall not be transferred except as the State Committee shall, in writing, approve transfers made pursuant to the provisions of subsections a, b, and c of this numbered paragraph 4 of Administrative Ruling II. All requests for transfer of production history shall be in writing, signed by, or on behalf of the producer by his duly authorized agent, and approval thereof shall be in writing signed by at least two members of the State Committee. In no event shall the State Committee approve the transfer of production history by reason of foreclosure, execution or any forced sale.

(a) If a producer has died or has been declared legally incompetent by a Court of competent jurisdiction and has not executed, prior to the date of such death or incompetency, an Application for an allotment and quota, his records of production may be used by such heirs or devisees, or such member of the family of such deceased producer or by such members of the family of such incompetent producer as are continuing the farming operation of the deceased or incompetent producer, upon their furnishing proof of such relation-

ship and succession to the producer's farming operation.

(b) If a well or canal operator voluntarily sells his well or canal system and has not executed an application, his production history shall be transferred to such successor, provided that the former well or canal operator was not engaged in farming operations in 1934.

(c) If a partnership is dissolved before an application for an allotment and quota has been executed by or on behalf of the partnership, its records of rice production for the base period shall be divided among the partners in such proportions as is agreed upon by the partners or their authorized representatives in writing submitted to the State Committee.

5. In all figures representing final determination of individual allotments and quotas, fractions amounting to one-half a unit or less shall be dropped and fractions amounting to more than one-half a unit shall be considered a whole unit.

6. If a producer during the base period had operated in more than one state, he shall apply for an allotment and quota to the State Committee of each state in which he had farmed during the base period. Only the history earned by the producer in that state shall be presented to the State Committee in his Application. No producer shall be assigned Allotments and Quotas in two or more states, larger in the aggregate, than the Allotments and Quotas assignable to him in one state, had all of his farming operations been confined to that one state.

7. The sum of all Allotments and of all Quotas within a State shall not in any event exceed the State Allotment and Quota, respectively.

III. Transfer of Allotment and Quota.—The producer's Allotment and Quota shall not be transferred except as the State Committee shall in writing approve transfers made pursuant to the provisions of subsections a, b, c, and d of this Ruling III. In no event shall the State Committee approve the transfer of an Allotment or Quota by reason of foreclosure, execution, or any forced sale. All requests for transfer shall be made in writing signed by or on behalf of the producer by his duly authorized agent, and approval thereof shall be in writing signed by at least two members of the State Committee.

(a) If a producer dies or has been declared incompetent by a Court of competent jurisdiction after executing an Application but before executing a Contract, his allotment and quota may be transferred to such heirs, devisees, or such members of the family of such deceased producer or such members of the family of such incompetent producer as are continuing the farming operations of the deceased or incompetent producer, upon their furnishing proof of such relationship and succession to the producer's farming operation.

(b) If a producer voluntarily withdraws, either wholly or in part, from the production of rice after executing an Application but before executing a Contract, he may transfer all or part of his Allotment and Quota to such persons as are continuing his farming operation, upon proof of such withdrawal and succession.

(c) If a producer has become disabled and has retired from the production of rice after executing an Application but before executing a Contract, he may transfer all or part of his Allotment and Quota to such

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person as is continuing his farming operations upon proof of such disability, retirement, and succession.

(d) Upon dissolution of a partnership, after an Application has been executed by or on behalf of the partnership, but before a Contract has been executed by or on behalf of the partnership, the Allotment and Quota shall be divided among the partners in such proportions as is agreed upon by the partners or their duly authorized representatives in writing submitted to the State Committee.

IV. Use of Allotment and Quotas by Well or Canal Operators.—If a well or canal operator has an allotment and quota assigned to him by the State Committee on the basis of his personal history as a furnisher of water on a crop share basis, such well or canal operator shall not change his status so as to use such allotment and quota in a capacity other than as a furnisher of water on a share crop basis.

V. Signing of Application, Declaration, Contracts, and Other Documents by a Person in a Representative Capacity.—

(1) In the event any document is to be executed on behalf of a Corporation, it shall be signed on behalf of the Corporation by an officer of the Corporation, who shall state his title, and affix the corporate seal to the Contract, (If the Corporation has no corporate seal, the following statement in writing shall appear over the signature, "No corporate seal required or adopted,") or by a representative of the corporation other than an officer, who has been authorized by the corporation to execute the contract by power of attorney, under seal, duly executed on behalf of the corporation on a prescribed form and filed with the Comptroller of the Agricultural Adjustment Administration at Washington, D. C., or

attached to the contract, which authorization shall be considered a part of the contract documents.

(2) In the event a document is to be signed by an executor, administrator, guardian of an incompetent person, receiver, or other person appointed by a Court in a fiduciary capacity, there shall be furnished either the original or a certified copy of the Court order of appointment or a certificate on a prescribed form showing that such person was duly appointed as such fiduciary and that the appointment is still in full force and effect.

(3) Where a document is signed by a manager or an agent for a producer, the original or a certified copy of a Power of Attorney, on a prescribed form, authorizing the manager or agent so to sign shall be furnished.

(4) If the producer is a Governmental body or agency, there shall be attached to the document a certified copy of a resolution of the Board or other authority authorized by statute to lease and contract in regard to the land and personal property covered by the contract, authorizing the execution of such document by the person executing the document on its behalf.

(5) When one producer has several documents to be signed by the same agent or attorney, a properly executed power of attorney may be filed with the Comptroller of the Agricultural Adjustment Administration to cover all such cases, and shall be considered as a part of each document so signed.

(6) A document to be signed for a partnership shall be executed in the name of the partnership and of each partner as an individual, by each member of

the partnership, or on behalf of each partner who does not personally sign, by an agent duly authorized to so sign by a Power of Attorney, on a prescribed form.

VI. Pledge of Adjustment Payments.—Adjustment payments may not be assigned under any condition. This is forbidden by the Contract, as well as prohibited by law.

However, the producer's right to adjustment payments under the Contract may be pledged in order to obtain funds (or credit) for carrying on the current operation of the farm. The expression "funds" (or credit) for carrying on the current operation of the farm and "current production credit" means funds or credit to meet any necessary expense of preparing of land, planting, cultivating, watering, harvesting, and marketing of the rice crop grown in the year 1935. Without in any way limiting the exclusiveness of the above definition, the expression shall not include cash rent or debts incurred in connection with the production of past crops.

No pledge of any producer's right to adjustment payments under his contract for any purpose other than to procure current production credit as defined above shall give rise to any obligation under the Contract upon any payee designated therein by the producer to distribute such payment, when and if accepted by such payee, to the person claiming to hold such a pledge not given for current production credit.

Dated April 18, 1935.

R. G. TUGWELL,
Acting Secretary of Agriculture.

EXHIBIT "B".

Filed Oct. 25, 1935.

Form Rice 36,
U. S. Department of Agriculture,
Agricultural Adjustment Administration,
Rice Section.
Form approved by Comptroller General, U. S.,
May 1, 1935.

1935 Southern Rice Production Adjustment Contract.

(Pursuant to and to effectuate the purposes of the Agricultural Adjustment Act, approved May 12, 1933, as amended, hereinafter referred to as the Act.)

I. Performance by Producer:

1. The undersigned producer (and each and all of them if more than one signs this instrument) hereby offer(s) to enter into a contract with the Secretary of Agriculture (hereinafter referred to as the "Secretary") upon the terms and conditions hereinafter set forth and subject to such regulations or administrative rulings (which shall be part of the terms and conditions of this contract) as have been heretofore or may hereafter be prescribed by the Secretary relating to 1935 Southern Rice Production Adjustment Contracts. This contract shall apply to every farm upon which the producer participates in any manner in the production of rice in 1935 (hereinafter referred to as "the farm(s) covered by this contract"). This offer shall become a binding contract upon its acceptance by the Secretary.

2. The producer,

(a) Represents that he has allocated to each farm upon which he will participate in any manner in the production of rice in 1935 some part of his allotment and that the total acreage allocated by the producer to all such farms does not exceed his allotment;

(b) Agrees that he will not share or participate in any manner in the production of rice in 1935 on any farm to which he has not allocated a portion of his allotment;

(c) Agrees that for the purposes of checking compliance and making payments under this contract "the producer's share of the acreage planted to rice in 1935" on each farm covered by this contract shall be that acreage actually planted to rice on such farm in 1935 which bears the same ratio to the total acreage planted to rice on such farm in 1935 that the acreage allocated by the producer to such farm bears to the total acreage allocated thereto by all persons participating in the production of rice thereon;

(d) Agrees that his total share of the acreage planted to rice in 1935 on all the farms covered by this contract shall not exceed his allotment;

(e) Agrees that the acreage permitted under this contract to be planted to rice in 1935 shall be farmed in a workmanlike manner throughout 1935;

(f) Applies for membership in the Rice Production Control Association organized pursuant to Form Rice 35 in each County or Parish in which a farm covered by this contract is located;

(g) Agrees to permit access by any authorized agent of the Secretary to the farm(s) covered by this contract, and to all fiscal books, records, and documents, regardless of where located, pertaining to the

production and/or sale of rice on or from any and all of such farms, and expressly waives any right to have such records kept confidential;

(h) Agrees not to sell, pledge, transfer, or assign, in whole or in part, this contract or his right to or claim for payments under this contract, and not to execute any power of attorney to collect such payments, and any sale, pledge or assignment, order or power of attorney shall be null and void, except that the producer may pledge or hypothecate his right to any adjustment payments under this contract for the purpose of obtaining funds (or credit) for carrying on the current operation of the farm(s) covered by this contract (hereinafter referred to as "current production credit") and such pledge or hypothecation shall operate to establish an interest or right on the part of the pledgee in and to said adjustment payments as against any other person or persons, but the pledge or hypothecation thereof shall not alter the provisions of paragraph 5 that all adjustment payment checks drawn in compliance with this contract shall be made payable to the payee therein stipulated. If the adjustment payments herein provided for shall have been pledged by the producer for current production credit, the producer, or if a payee is designated in paragraph 5 hereof and accepts such payment, then such payee if notified in writing of the pledge, shall receive the adjustment payment in trust to pay therefrom to the pledgee the amount of the obligation owing for current production credit secured by such pledge and to pay the balance of said payment to the producer. If a payee other than the producer is named in paragraph 5 hereof, and if such payee shall not have been notified of any pledge of the adjustment payments for current production credit made pursuant to the terms of this numbered paragraph, such payee shall receive such payments in trust to pay the whole amount

thereof to the producer, it being expressly understood and agreed that the Secretary shall have no duty or obligation to see that distribution is made in accordance with the foregoing provisions, but shall have the right to enforce the performance of said trust by the payee;

(i) Represents that the statements contained herein are true to the best of his information and belief. Without limitation of any other right or remedy of the Secretary conferred by law or this contract, a material misstatement herein or in any information furnished by the producer in connection with this contract or any noncompliance by the producer with any of the terms hereof, or with any applicable regulation or administrative ruling which has been or may hereafter be prescribed by the Secretary with reference to 1935 Southern Rice Production Adjustment Contracts shall be grounds for termination of this contract by the Secretary. The determination of the Secretary that any such misstatement or noncompliance has occurred shall be final and conclusive. In the event of termination of this contract by the Secretary, the producer shall return to the Secretary all payments theretofore made under this contract, together with all costs incident to the collection thereof.

II. Performance by Secretary:

3. Amount of Payments.—The Secretary shall, as a consideration for the performance by the producer of all the terms and conditions of this contract, and in the manner and at the times specified in paragraph 4 hereof, make

(1) A first adjustment payment at a rate of 81 cents per barrel of rice, and

(2) A second adjustment payment at a rate per barrel of rice, uniformly applicable to all such contracts, to be determined by the Secretary,

upon an amount of rice determined in the manner specified in sub-paragraph (a) or (b) of this numbered paragraph, whichever shall apply:

(a) If the producer's total share of the acreage planted to rice in 1935 on all the farm(s) covered by this contract is not more than 100 per cent nor less than 85 per cent of the producer's allotment, such payments shall be made upon that number of barrels of rice which equals 85 per cent of the producer's quota.

(b) If the producer's total share of the acreage planted to rice in 1935 on all the farm(s) covered by this contract is less than 85 per cent of the producer's allotment, such payments shall be made upon that number of barrels of rice which bears the same ratio to the producer's quota that the producer's total share of the acreage planted to rice in 1935 on all such farms bears to the producer's allotment.

4. Time of Payments.

(a) The first adjustment payment shall be made as soon as practicable after August 1, 1935, provided that proof satisfactory to the Secretary, of compliance with the terms and conditions of this contract, has been submitted to the Secretary or his authorized agent.

(b) The second adjustment payment shall be made as soon as practicable after December 1, 1935, provided that proof satisfactory to the Secretary, of compliance with the terms and conditions of this contract, has been submitted to the Secretary or his authorized agent.

5. (a) All adjustment payments hereunder are for the benefit of the producer and shall be made only to the producer unless the producer shall, by naming another person in this numbered paragraph, direct that such payments be made to the person so named, in which event the payments shall be made by check drawn payable to the person so named who shall receive them subject to the provisions of this contract, and particularly subject to the provisions of subparagraph (h) of paragraph 2 hereof. If the person so named shall have died or shall refuse to accept such payment, or shall for any reason be unable to receive and distribute such payment subject to the provisions of this contract then such payment shall be made to the producer, who likewise shall receive such payments subject to the provisions of this contract and particularly subject to the provisions of subparagraph (h) of paragraph 2 hereof.

(Stamp State and County code above.)

State..... Parish } .....
County }
Community..... Contract }
Serial No. } .....

5. (b) Designated payee .....
of.....
(Address of payee)

III. Signature(s) of Producer(s).

6. In Witness Whereof, each of the undersigned has hereunto set his hand on the date indicated opposite his signature.

...., 1935.
(Witness) (Date of Producer's signature)

.....
(Signature of Producer) (Application No.)

Address of Producer (Rural Route No.) .... (Box No.) .... (Post Office) ..... (State) .....

...., 1935.
(Witness) (Date of Producer's signature)

....
(Signature of Producer) (Application No.)

Address of Producer (Rural Route No.) .... (Box No.) .... (Post Office) ..... (State) .....

IV. Certification of Committees.

We Hereby Certify that we have examined the foregoing offer and that, to the best of our information and belief, the total acreage allocated by the producer to all the farm(s) covered by this contract does not exceed the producer's allotment, and hereby recommend that the foregoing offer be accepted by the Secretary.

.....
(For Community Committee)

.....
(For County Committee)

.....
(For State Committee)

.....
(For Community Committee)

.....
(For County Committee)

.....
(For State Committee)

Date....., 1935. Date....., 1935. Date....., 1935.

V. Acceptance by Secretary.

In consideration of and in reliance upon the agreements of the producer herein set forth and the repre-

sentations made by the producer in and in connection with this contract, this offer is hereby accepted, this .....day of ....., 1935.

HENRY A. WALLACE,
Secretary of Agriculture, for and on behalf of the United States,

By .....,
Representative of Secretary of Agriculture.

VI. State Committee's Certificate of Compliance.

The undersigned State committeemen certify that the producer's total share of the acreage planted to rice in 1935 on all farm(s) covered by this Contract does not exceed the producer's allotment, and further certify that the producer's allotment and quota and the producer's total share of the acreage planted to rice in 1935 on all farms upon which the producer is participating in the production of rice in 1935 are correctly stated in items 1, 2, and 3, respectively, of part VIII below, and further certify that to the best of their information and belief the producer has fully complied with all terms of this Contract and all regulations and administrative rulings issued by the Secretary applicable up to and including the date of this certificate.

Date ....., 1935.

.....
(For State Committee)

.....
(For State Committee)

VII. Producer's Certificate of Compliance.

The producer certifies that his total share of the acreage planted to rice in 1935 on all farms upon which he is participating in any manner in the production of

rice does not exceed his allotment, that his allotment and quota, and his total share of the acreage planted to rice in 1935 on all farms on which he is participating in any manner in the production of rice in 1935 are correctly stated in items 1, 2, and 3, respectively, in part VIII of this contract, and further certifies that he is not sharing in the production of rice on any farms covered by this Contract are being farmed in a workmanlike manner, and that he has fully complied with all other terms of this Contract, and with all regulations and administrative rulings issued by the Secretary, applicable up to and including the date of this certification.

..... (Witness)
Date....., 1935.

....,
(Producer.)

VIII. Certified Basis for Determining Payments.

1. Producer's allotment .....(acres) .....
2. Producer's quota .....(bbl.) .....
3. Producer's share of acreage measured .....
4. Quota percentage (item 3 ÷ item 1).... .....%*
5. Number of barrels for payment (item 4 times item 2) ....

*If the above percentage is not more than 100 nor less than 85 per cent, then 85 per cent shall be used.

Do not write in this blank; for use by Comptroller's Office.

Computation of payments:

1935 first adjustment payment Item 5 times 81¢ per bbl. ....$.....

1935 second adjustment payment, Item 5 times ....¢ per bbl.....$.....

Total .....$.....

Do Not Write in Space Below.

Certificate of Comptroller.

Audited and approved for 1935 first adjustment payment in the amount of ..... $.....

JOHN B. PAYNE,
Comptroller,

By .....,
Auditor.

Schedule No. .....

Date.....

Paid ..... by check on Treasurer of the United States in favor of payee or payees named thereon.

Check No..... $.....

Certificate of Comptroller.

Audited and approved for 1935 second adjustment payment in the amount of ..... $.....

JOHN B. PAYNE,
Comptroller,

By .....,
Auditor.

Schedule No. .....

Date.....

Paid ..... by check on Treasurer of the United States in favor of payee or payees named thereon.

Check No..... $.....

(Any intentional misrepresentation of fact made in this contract for the purpose of defrauding the United States will be subject to the criminal provisions of the United States Code.)

EXHIBIT "C".

Filed October 25, 1935.

Sec. 21. (a) No suit, action, or proceeding (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any Court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (d) of this section, may be reserved in the Court's order.

(b) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regulations of the Secretary with the approval of the President prior to the date of the adoption of this amendment,

are hereby legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which have accrued and remain unpaid on the date of the adoption of this amendment shall be assessed and collected pursuant to section 19, and to the provisions of law made applicable thereby. Nothing in this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary of Agriculture or of the President done or made prior to the date of the adoption of this amendment.

(c) The making of rental and benefit payments under this title, prior to the date of the adoption of this amendment, as determined, prescribed, proclaimed and made effective by the proclamations of the Secretary of Agriculture or of the President or by regulations of the Secretary, and the initiation, if formally approved by the Secretary of Agriculture prior to such date of adjustment programs under section 8 (1) of this title, and the making of agreements with producers prior to such date, and the adoption of other voluntary methods prior to such date, by the Secretary of Agriculture under this title, and rental and benefit payments made pursuant thereto, are hereby legalized and ratified, and the making of all such agreements and payments, the initiation of such programs, and the adoption of all such methods prior to such date are hereby legalized, ratified, and confirmed as fully to all intents and purposes as if each such agreement, program, method, and payment had been specifically authorized and made effective and the rate and amount thereof fixed specifically by prior Act of Congress.

(d) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the Court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be refunded or credited to any person (not

a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (a) and (b) of section 16, had the tax terminated by proclamation pursuant to the provisions of section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish to the satisfaction of the Commissioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the Court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any Court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held invalid a claim therefor (conforming to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2)

no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such Courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, on jurisdiction of such Courts based upon the amount in controversy.

(e) In connection with the establishment, by any claimant, of the facts required to be established in subsection (d) of this section, the Commissioner of Internal Revenue is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda, relative to any matter affecting the findings to be made by the Commissioner pursuant to subsection (d) of this section, to require the attendance of the claimant or of any officer or employee of the claimant, or the attendance of any other person having knowledge in the premises, and to take, or cause to be taken, his testimony with reference to any such matter, with power to administer oaths to such person or persons. It shall be lawful for the Commissioner, or any collector designated by him, to summon witnesses on behalf of the United States or of any claimant to appear before the Commissioner, or before any person designated by him, at a time and place named in the

summons, and to produce such books, papers, correspondence, memoranda, or other records as the Commissioner may deem relevant or material, and to give testimony or answer interrogatories, under oath, relating to any matter affecting the findings to be made by the Commissioner pursuant to subsection (d) of this section. The provisions of Revised Statutes 3174 and of Revised Statutes 3175 shall be applicable with respect to any summons issued pursuant to the provisions of this subsection. Any witness summoned under this subsection shall be paid, by the party on whose behalf such witness was summoned, the same fees and mileage as are paid witnesses in the Courts of the United States. All information obtained by the Commissioner pursuant to this subsection shall be available to the Secretary of Agriculture upon written request therefor. Such information shall be kept confidential by all officers and employees of the Department of Agriculture, and any such officer or employee who violates this requirement shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both, and shall be removed from office.

(f) No refund, credit, or abatement shall be made or allowed of the amount of any tax, under section 15, or section 17, unless, within one year after the right to such refund, credit, or abatement has accrued, a claim for such refund, credit, or abatement (conforming to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled to such refund, credit, or abatement, except that if the right to any such refund, credit, or abatement accrued prior to the date of the adoption of this amendment, then such one year period shall be computed from the date of this amendment. No interest shall be allowed or paid, or included in any judgment, with respect to any such claim for refund or credit.

(g) The provisions of section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax, or any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of section 317 of the Tariff Act of 1930.

RETURN TO RULE TO SHOW CAUSE WHY TEMPORARY INJUNCTION SHOULD NOT ISSUE.

Filed Oct 28th, 1935.

(Title Omitted.)

To the Honorable the Judge of the District Court of the United States in and for the Eastern District of Louisiana:

Now into Court comes Rufus W. Fontenot, Acting Collector of Internal Revenue, Defendant in the above entitled and numbered cause, through Rene A. Viosca, United States Attorney in and for the Eastern District of Louisiana, and Robert Weinstein, Assistant United States Attorney for said District, his attorneys, and by virtue of the rules and practice of this Court requiring the defendant in rule to file all defenses to the rule on the date set for the hearing on the application for a temporary injunction, and with full reservation of all of his rights under the pleadings in this cause,

answers the rule by stating that for lack of sufficient information to justify a belief he denies all of the allegations of paragraph two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen of the Bill of Complaint, and also denies the allegations of paragraph one with the exception of the statement relative to the defendant, which statement is admitted.

Your Respondent further avers that the proceedings should be dismissed for the reasons that this Honorable Court has no jurisdiction and that the Agricultural Adjustment Act is constitutional, valid and enforceable.

Wherefore, your Respondent prays this Honorable Court to dismiss the Bill of Complaint at Complainant's costs and to refuse granting any injunction in these proceedings, and for all general and equitable relief.

(Signed) RENE A. VIOSCA,
United States Attorney.
(Signed) ROBERT WEINSTEIN,
Asst. United States Attorney.

(Verification.)

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, personally came Rene A. Viosca, who is the United States Attorney for the Eastern District of Louisiana, who in his oath says: That in his aforesaid official capacity he is of counsel for defendant in the above case; that he has drawn the return to the rule to show cause and that all the allegations of fact therein are true and correct to the best of his knowledge, information and belief.

(Signed) RENE A. VIOSCA.

Sworn to and subscribed before me this 28th day of October, 1935.

(Signed) CLAUDE D. SHAW,
Deputy Clerk, U. S. District Court, Eastern District of Louisiana.

MOTION TO DISMISS.

Filed Oct. 28, 1935.

(Title Omitted.)

To the Honorable, the Judge of the District Court of the United States in and for the Eastern District of Louisiana:

Comes now Rufus W. Fontenot, Acting Collector of Internal Revenue, defendant in the above entitled and numbered cause, by Rene A. Viosca, United States Attorney in and for the Eastern District of Louisiana, and Robert Weinstein, Assistant United States Attorney for said District, his attorneys, with full reservation of his rights to further plead in this cause, and moves the Court to dismiss the Bill of Complaint filed herein, with costs to be paid by the Complainant upon the following grounds and for the following reasons:

I.

That this Court is without jurisdiction to restrain or enjoin the collection of taxes herein involved, or to hear and/or determine the issues presented by said bill of complaint because:

1. Section 3224 of the Revised Statutes of the United States prohibits the maintaining in any Court of a suit for the purpose of restraining the assessment and/or collection of Federal Tax.

2. Section 21-A of the Agricultural Adjustment Act, as amended, prohibits the maintaining in any Court of a suit for the purpose of restraining the assessment and/or collection of any processing tax under the said Agricultural Adjustment Act.

3. The bill of complaint sets forth no facts which, if true, would entitle complainant to the relief prayed for in a Court of Equity.

4. Complainant has a plain, adequate and complete remedy in the ordinary course of law.

II.

That the United States of America is the real party in interest, which may not be sued without its consent.

III.

That there is no actual controversy between complainant and defendant or between any parties over which this Court has jurisdiction within the purview of the Declaratory Judgment Act.

IV.

That the Declaratory Judgment Act was not intended by the Congress to be used for the litigation of questions arising under the Revenue Laws, and particularly was not intended as a means for obtaining injunctive relief.

V.

This proceeding is prohibited by the provisions of the Declaratory Judgment Act, as amended, and cannot be maintained. (Revenue Act of 1935, approved August 31, 1935, Section 405).

Dated: this 28th day of October, 1935.
(Sgd.) RENE A. VIOSCA,
United States Attorney.
(Sgd.) ROBERT WEINSTEIN,
Assistant United States Attorney.

ORDER OF COURT CONSOLIDATING ALL CASES FOR TRIAL, ETC.

Filed Oct. 28, 1935.

United States District Court, Eastern District of Louisiana, New Orleans Division.

Docket No. 321—In Equity:

Rickert Rice Mills, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 322—In Equity:

A. B. Dore, doing business under the name of The Dore Rice Mill,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 323—In Equity:

United Rice Milling Products Co., Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 324—In Equity:

Baton Rouge Rice Mill, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 325—In Equity:

T. Simon
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 326—In Equity.

Levy Rice Milling Company, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 327—In Equity:

Farmers Rice Milling Company, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 328—In Equity:

Noble-Trotter Rice Milling Co., Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Considering the stipulation and agreement of counsel for all parties made this day in open Court;

It is Ordered that the above numbered and entitled cases be and they are hereby consolidated for the

purpose of trial and that the affidavits and evidence offered in one case be considered to apply to all.

(Signed) JOHN McDUFFIE, Judge.

New Orleans, Louisiana, October 28, 1935.

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, on this day personally appeared W. M. Reid, known to me, who being by me first duly sworn in terms of law deposed and said on his oath as follows:

My name is W. M. Reid. I reside in New Orleans, Louisiana, and am Executive Secretary of the Rice Millers' Association. My principal duties are the preparation and interpretation of statistical and economic data with regard to the rice milling industry. I have been engaged in the rice milling business since 1909, and from 1916 to 1928, I personally operated a rice mill. I am thoroughly familiar with the rice milling industry in all of its phases.

I have read all of the allegations contained in Section 12 of Plaintiff's bill of complaint and Equity 321, Rickert Rice Milling Company vs. Rufus W. Fontenot, Equity 322, A. B. Dore vs. Rufus W. Fontenot, Equity 323, United Rice Milling Products Company, Inc., vs. Rufus W. Fontenot and companion cases, and all of such allegations are true and correct in every respect.

It is true that rice millers, when they purchase rough rice, consider the fact that they will have to pay a processing tax on the milling of such rough rice. However, this is simply one of the many factors entering into the miller's determination of what he ought to

pay for rough rice. As a practical matter, when the rice miller negotiates for the purchase of a given lot of rice, he first estimates what he believes he could get for such rice after milling on the existing market for clean rice and rice products. He then estimates what he thinks it will cost him to process the rough rice into its various grades and products, and in this estimate is included the amount of the processing tax, as well as other taxes. Having made these estimates, he determines what he ought to pay for the rough rice. However this is not necessarily what he does pay, because each individual miller is buying in competition with other millers. Thus, if other millers are paying more than he thinks he ought to pay, he has to meet the price the others are paying, if he is to get any rice. No individual miller makes the rough rice market. It is a market made of the composite purchasing of all millers in the particular territory. While the estimates above referred to are made with regard to the market for clean rice and rice products at the time of the purchase of the rough rice, that market, however, does not necessarily control since rough rice is not ordinarily milled, and the clean rice and products sold until several months after the purchase of the rough rice.

Since the market for clean rice and rice products fluctuates from day to day and month to month, the prospects of the future market has a bearing on what the miller may have to pay for rough rice. Optimism with reference to the future market for clean rice on the part of a sufficient number of rice millers will force up the market for rough rice, and all millers will have to meet the increased price of rough rice (if they are to have any rice at all), even though some of them may be pessimistic as to the future market.

For example, the present market price of rough rice is quite high with reference to the present market price for clean rice and rice products. In other words, using the estimates above referred to, the cost

of rough rice on today's market plus estimated cost of milling (including the processing tax) is more than the miller could reasonably expect to procure for the rice and rice products made from such rough rice on the existing market for clean rice and rice products. This present day market for rough rice is not made by any individual miller, but is made by the composite of purchases by all millers in the territory. Thus, as I have previously said, while the processing tax is considered by the miller in determining what he ought to pay for rough rice, it is simply one of many factors entering into such determination, and is by no means controlling.

Furthermore, it is impossible to tell on any given purchase of rough rice how much, if at all, that price has been affected by the existence of the processing tax.

I am familiar with accounting and statistical methods, and I know of no possible method of keeping books and records in the rice business which would accurately reflect the gain or loss from the purchase, milling and sale of any given lot of rice as distinguished from the gain or loss from the aggregate of all transactions during a season. A profit or loss, however, may be estimated at any given time by the use of averages, predictions and arbitraries.

The rice milling business is seasonal; the season beginning on August 1st and ending on July 31st, the operations gradually increasing until the peak is reached during the months of October, November and December, and decreasing to the end of the season. For this reason as well as others, the cost of milling varies greatly from time to time during the season. The estimated cost of milling which millers use in budgeting and determining what they want to pay for rough rice is arrived at by averaging the cost of the entire season so that this factor, when used to estimate a profit or loss on a given transaction, could never be exact, and might be very

much too high or very much too low when applied to that particular transaction.

Under these circumstances, when a miller purchases a particular lot of rice, he may believe that all, or a part of the processing tax to be assessed on such rice will be absorbed by the farmer. On the other hand, he may believe that all, or a part of such tax will be absorbed by himself. However, he can never even know, much less prove, even after all the clean rice and rice products made from the particular lot of rough rice has been sold, whether he, or the farmer, or the purchaser, or all of them together has borne the ultimate economic burden of the tax. This is because any belief he may have had as to whether the burden of the tax would fall, must of necessity, have been based in part on estimates, which are in turn, based on averages, which are never accurate with respect to any given lot of rice. In addition, such belief must also be based in part on assumptions as to market conditions on clean rice and rice products, which may or may not be correct. The rough rice may go through the mill on a day when large amounts are being milled, and the cost per unit is lower than the average; or, it might go through on a day when little rice was being milled resulting in a unit cost higher than the average; or, it might go through partly on one kind of a day, and partly on another. Furthermore, the rice may not mill out what he expected, even if the market on clean rice and rice products remains the same. And, in addition, the price at which he eventually sells the clean rice and rice products may be substantially less or substantially more than the sale price on which he based his presumptions.

There is no necessary relation between the market for clean rice and for rice products, since they are sold for different purposes, and this is an added reason why the miller cannot possibly allocate the cost of a given lot of rough rice among the clean rice and rice products produced from it.

For example, it is entirely possible for the market on bran or hulls to be relatively high, while the market on the various grades of head rice is relatively low. The rough rice market is affected by the clean rice and rice products market and vice versa, but it is as impossible to determine their relative affect on each other as it is to determine whether the hen or the egg came first. I know of no way of determining what either the rough rice or clean rice marked would be if there were no processing tax. I do know, however, that the individual miller cannot force down the price paid to the farmer for rough rice because of the tax, and thus force the farmer to pay all, or a part of the burden of the tax. The individual miller simply pays the market price for rough rice which has been fixed by the composite action of all millers, and it would be impossible to prove whether a lowering of the rough rice market was the result of the assessment of the tax, or whether it was caused by other factors, such as a drop in time clean rice and rice products market, a composite pessimism on the part of rice millers as to the future market or other factors. The same thing is true with regard to the market for clean rice and rice products, and no individual miller can arbitrarily force that market upwards in order to pass on the tax.

(Sgd.) W. M. REID.

Sworn and subscribed to before me, the undersigned authority, this 28 day of October, 1935.

(Sgd.) HARRY R. CABRAL.

(Seal) Notary Public.

State of Texas,
County of Harris.

Before me, the undersigned authority, on this day personally appeared Homer L. Bruce, who, having been by me duly sworn, stated on oath as follows:

He lives in Houston, Harris County, Texas, and is duly licensed and practicing attorney at law. He is

familiar with the bills of complaint that are being presented to the United States District Court at New Orleans, Louisiana, on behalf of certain rice millers of Louisiana seeking an injunction against the collection of processing taxes on rice, having worked with his partner Mr. John P. Bullington in the preparation of said bills of complaint, and is familiar with the general practice of the rice industry of selling rice on samples and the filling of orders for clean rice by mixing rice from different lots of clean rice in the manner set out in the bills of complaint.

This affidavit is made in connection with the allegations in said bills that it is impossible for the plaintiff rice millers to comply with the requirements of Section 21 (d) of the Agricultural Adjustment Act that they shall establish that no part of the processing tax has been passed on to the consumer or taken out of the price paid the producer before they are allowed to recover any processing taxes paid.

Section 8 (3) of the Agricultural Adjustment Act gave the Secretary of Agriculture authority to issue licenses to processors, including processors of rice, and provided that the Secretary should have the right to revoke any license for violations of its terms. Section 8 (2) of the same Act authorized the Secretary to enter into marketing agreements with processors.

In the fall of 1933, the Secretary entered into a marketing agreement with members of the southern rice milling industry, and at the same time issued a license applicable to all mills. This marketing agreement and the license were in substantially the same form. Later various amendments were made to both the marketing agreement and the license.

In the marketing agreement and in the license, the Secretary of Agriculture fixed the price to be paid to farmers for rough rice, these prices being set out in Article III of the marketing agreement and license hereinafter referred to, namely, the one effective on July 21, 1934. Article IV, Section 1 of the license

effective July 21, 1934, set out the minimum price that millers might sell clean rice for in the domestic market and that section is as follows:

"Section 1. To effectuate the purposes of this Amended license and to aid in the carrying out and enforcement of the provisions hereof, no miller shall offer for sale, sell or deliver for domestic consumption any quantity of clean rice for an amount per pocket less than the sum of

(a) the minimum price, determined pursuant to article III and Schedule 1, for the grade, variety and quantity of the rough rice from which such clean rice was milled,

(b) the conversion charge for such quantity of rough rice and prevailing at the time of such offer, sale or delivery, and

(c) the published car lot rail rate for transporting such rough rice from the customary point of delivery to the miller's mill, and

(d) the administrative assessment for such quantity of rough rice and prevailing when such rice was milled;

Provided, however, that any miller may offer clean rice for sale for export to foreign countries, on the foregoing basis less a maximum discount of 20 cents per barrel of such rough rice and may, if the rice is actually exported, sell or deliver clean rice for export to foreign countries on said basis less said maximum discount. The determination of the Millers Committee as to whether or not clean rice is actually exported

shall be final and conclusive, subject to appeal to the Secretary. Said minimum amounts, below which this section provides that clean rice shall not be offered for sale, sold, or delivered by a miller, apply f. o. b. the miller's mill.

Sec. 2. The conversion charge per barrel of rough rice shall, until and except as changed by the Secretary, be an amount equal to the sum of (a) seventy (70) cents per barrel of rough rice, (b) nine (9) cents per barrel of rough rice if standard one-hundred pound single packages are used for the clean rice, and (c) if cotton or paper inner linings or regular burlap outer slips are used for the clean rice, an additional five (5) cents per barrel of rough rice, or (d) if any other type of container is used for the clean rice, the actual invoice price for the container used. The Secretary may at any time and from time to time during the effective period, increase or decrease the amount of, and/or change the basis of computation of, the conversion charge."

One of the main purposes, if not actually the main purpose, of the Agricultural Adjustment Act and this license was to increase the price of rough rice paid the farmer, and in order to keep the rough rice price at a higher level, the Secretary attempted by this Section 1 to fix the price that clean rice might be sold at as roughly 79¢ per barrel above the cost of the rough rice. It was extremely important to keep the clean rice up to this level in order to maintain the rough rice price. In the fall of 1934, the Secretary of Agriculture brought proceedings, according to the information and belief of the affiant, against a number of different rice mills in Louisiana and to affiant's knowledge against Bay City Rice Mills of Bay City, Texas, a partnership composed of W. M. Loving and three other partners. The case against the Bay City Mills was case No. 11-1-7, entitled In the Matter of W.

M. Loving, R. Q. Pegram, S. M. Clements and L. D. Clements, Individually and as Co-partners trading under the name Bay City Rice Mills. One of the original charges against the Bay City Rice Mills was Charge No. 11, which charged in general terms that the Mill had sold clean rice for domestic consumption for an amount less than the price fixed for the sale of the clean rice pursuant to this license. This Charge 11 was later made more specific as follows:

"11. That the said Licensee since the effective date of said License has violated Section 1 of Article V of said License as in effect until July 21, 1934, 12:01 A. M. Eastern Standard Time, and Section 1 of Article IV of said License as in effect from July 21, 1934, 12:01 A. M. Eastern Standard Time on, in that said Licensee has offered for sale, sold and delivered, for domestic consumption, quantities of clean rice, to-wit: Clean rice lot numbered 36 on the books of the respondent derived from rough rice lot numbered 33 on the books of the respondent and purchased from C. E. Everitt; clean rice lot numbered 43 on the books of the respondent derived from rough rice lot number 33 on the books of the respondent and purchased from C. E. Everitt; clean rice lot numbered 123 on the books of the respondent derived from rough rice lot numbered 153 on the books of the respondent and purchased from A. P. Powers clean rice lot numbered 124 on the books of the respondent derived from rough rice lot numbered 154 on the books of the respondent and purchased from J. R. Reed; for an amount per pocket less than the price fixed for the sale of such clean rice pursuant to said Section 1 of Article V of said License as in effect up until July 21, 1934, 12:01 A. M. Eastern Standard Time, and pursuant to said Section 1 of Article IV of said License as in effect from July 21, 1934, 12:01 A. M. Eastern Standard Time on."

The affiant, together with Mr. W. E. Davant of Bay City, Texas, represented the Bay City Rice Mills in this hearing before the representatives of the Secretary of Agriculture on these charges, which hearing was held in Houston, Texas, and again on December 27, 1934, and ran through January 2, 1935.

The Bay City Rice Mills in that proceeding took the position, and so advised the Secretary of Agriculture's representatives, that it was utterly impossible, owing to the manner in which the rice industry is conducted, through the sale of clean rice on samples made up of mixes of different lots of clean rice, as more fully set out in the bills of complaint presented to the United States District Court at New Orleans in the processing tax suits, to determine in the case of any lot of rice, whether the clean rice had been sold for 79¢ more than the rough rice had cost, or for the amount above the cost of the clean rice that the Secretary required under Section 1 of Article IV.

The Secretary of Agriculture's representatives had access to all the books, vouchers and records of the Bay City Rice Mills, both in connection with its rough rice purchases and its clean rice sales and had several auditors continuously working on those records. The amount paid for the rough rice purchased from Evoritt, Powers and Reed, as set forth in said Charge II was established. The clean rice derived from the rough rice purchased from these three producers was traced at the hearing into the sales of clean rice into which they entered and the price of clean rice sales was established. However, owing to the fact that each quantity of clean rice that went into a sale was made up of a mixture from various lots of clean rice, which were in turn produced from various lots of rough rice bought from different producers, and owing to the fact that there was, as is usual in the rice business, an almost infinite variation in the combinations of these mixes of clean rice lots, and owing to the fact that rough rice when milled

produces different grades of clean rice, as set forth in the above mentioned bills of complaint, the Secretary of Agriculture was never able to show in that case whether or not the Bay City Rice Mills had obtained for the clean rice derived from the Evoritt, Powers, and Reed rough rice the amount (roughly 79c) above the cost of the rough rice that Article IV, Section 1, attempted to require the mill to get. Although that was one of the charges most vitally affecting the entire rice program in affiant's belief, and although the Secretary of Agriculture through his two attorneys who prosecuted the case and through his several auditors who were continuously working on the records of the Bay City Mills made every effort to prove the charge, the Secretary of Agriculture in his findings did not find that the charge had been proven and did not find that the Bay City Rice Mills had violated the license in the manner set forth in Charge 11.

Affiant believes, and on that belief states, that the reason the Secretary of Agriculture did not find that Charge 11 had been supported by any evidence was because it was utterly impossible practically to show whether clean rice had been sold for the amount above the rough rice cost that the license required.

The charge referred specifically to the sale of clean rice lots 36, 43, 123 and 124. Evidence as to the history of those clean rice lots is as set out below.

The clean rice in each case was included in various sales, each sale being represented by a separate invoice. The history of those clean rice lots was as follows: (As shown by the record in that case.)

Clean Rice Lot 36:

This rice came from rough rice lot 33 from C. E. Everitt. It was mixed with various other lots of rice and went in as a part of the rice sold and represented

by the following 9 invoices: Invoice Nos. 6615, 6622, 6634, 6639, 6645, 6767, 6770, 6771 and T-162 (R. 324-326).

The rice covered by invoice No. 6615 was made up of rice from various lots as follows:

39 pockets from lot 17, fancy
125 pockets from lot 31, fancy
200 pockets from lot 36, fancy
26 pockets from lot 33, heads
26 pockets from lot 31, heads
(R. 472.)

Invoice 6622 consisted of the following:

75 pockets from lot 26, fancy
250 pockets from lot 35, fancy
175 pockets from lot 36, fancy
(R. 475.)

Invoice 6634 consisted of the following:

148 pockets from lot 34 EP
75 pockets from lot 35 EP
75 pockets from lot 36 EP
81 pockets from lot 37 EP
68 pockets from lot 38 EP
150 pockets from lot 43 EP
201 pockets from lot 45 EP
(R. 478.)

There was no evidence whatsoever as to the different lots going to make up the rice on any of the other invoices heretofore or hereafter referred to, but each invoice represented a mix from various lots.

Clean Rice Lot 43:

This lot went into invoices 6634, 6639, 6644, T-126, T-127, T-128, and P-1006 (R. 327-329). No evidence

was introduced as to the component part of those invoices, except invoice 6634 above set forth, but they all consisted of mixes.

Clean Rice Lot 123:

This rice went into the following invoices:

Invoices Nos. 6832, 6833, T-187, T-188, 6840, T-195, 6839, T-200, 6885, 6886, T-201, T-202, T-187, T-188, and T-182 (R. 329 et seq.). No evidence was introduced as to the lots going into these invoices but they were all mixes.

Clean Rice Lot 124:

Affiant does not have the record at this time as to what invoices this lot went into but it was mixed into a number of mixed invoices.

To have traced the cost of the various lots of clean rice that went into each invoice would have been long involved and in fact practically impossible, and then to trace the cost of all rice going into all invoices into which any one of these clean rice lots went would have involved further and innumerable records and evidence.

This is further illustrated when it is noticed that a large number of rough rice lots and clean rice lots were involved, as, for example, in Charge 11 it referred to rough rice lot as high as No. 154 and clean rice lot as high as No. 124.

No charge was made that Bay City Rice Mills did not keep accurate and complete records of its operations.

Nor was any issue made as to the fact that the selling of rice by samples and mixing rice was usual and customary.

For example, Mr. F. A. Farda, who testified as a witness for the Secretary of Agriculture, and who is the Manager of Standard Rice Company, one of the largest rice milling companies in the United States, testified as follows:

"Mr. Farda:

Well, it is not common practice, in fact, it is not a practice to make a mixture just in order to put it in a warehouse and keep it. You make the mixture when you sell your rice, get ready to sell it, you sell it on a sample and then you make your composite mixture and your lots match your sample. *That is a common practice.*

"Mr. Davant:

Is it not a practice to make up these samples practically in the beginning of the season and to send them out as types?

"Mr. Farda:

The practice is to make hand mixes, and to send them samples, and when you sell on the samples you make your actual mixture, make it up." (R. 420-421.)

* * * *

"Mr. Farda:

The usual practice is, you don't make your mix until you have the rice sold." (R. 429-430.)

* * * *

"Mr. Farda:

You never make a mix until you have a sale made, because it would not be of material ad-

vantage to do so because you may not find another market for that particular blend that you make. *You therefore keep your rice in the original lots* to be in a position to make a blend of whatever the trade or market requires at that time." (R. 430.)

In connection with the above lots of clean rice, the Secretary's attorneys tried to make some allocation of the cost of rough rice to the different grades of clean rice produced as between fancy rice and head rice, but this was realized by all to be purely arbitrary allocation of cost without any real or sound basis for the same.

The above proceeding against Bay City Rice Mills was a proceeding before the Secretary of Agriculture to forfeit the license of Bay City Rice Mills for alleged violation of the license. The hearing was held before a representative of the Secretary of Agriculture.

In the foregoing affidavit the figure of 79c above rough rice cost has been referred to. That, as stated, was used only roughly. Under the license, the price for clean rice was to be the price fixed for rough rice plus the conversion charge plus the carload rail rate for transporting rough rice to the miller's mill plus the administrative assessment of 5c per barrel. The conversion charge was 70c per barrel plus 9c per barrel if standard one hundred pound single packages were used for clean rice plus 5c per barrel if cotton or paper interlinings were used. This would make the spread between the rough rice price and clean rice price approximately 89c exclusive of the freight item.

(Sgd.) HOMER L. BRUCE.

Subscribed and Sworn to before me, the undersigned authority, by Homer L. Bruce, this 27th day of October, 1935.

(Sgd.) RAYMOND REILSON,
(Seal) Notary Public in and for Harris County, Texas.

AFFIDAVIT.

State of Louisiana,
Parish of Orleans.

We, L. J. Bartel, R. F. Gould, and J. J. Mayer, each first being duly sworn, deposes and says:

That we are Deputy Collectors of the Treasury Department, Internal Revenue Service, Louisiana District, working in connection with the rice processing tax division, and that the experience of each in the rice industry, prior to becoming Deputy Collectors, is as follows: L. J. Bartel has had actual experience of approximately twenty years in buying rough rice; operation of rice milling plants, and the distribution of milled rice and by-products. R. F. Gould has had actual experience as follows: Fifteen years with the largest rice millers of the industry as Office Manager, and Chief Accountant; one year as Secretary, and auditor of a rough rice buying agency for New Orleans rice mills, and one and one-half years as traveling auditor for the Millers Committee, an agency operating under a Marketing Agreement for the Southern Rice Industry. J. J. Mayer has had approximately seven years actual experience in buying, selling and grading rough rice and distributing milled rice, and by-products. Our broad experience, as above outlined, reveals the following facts as existing in the rice milling industry:

There is no established market price on rough rice, and the method of buying the rough rice by the millers is a competitive bidding method. Each miller has his buyer, who makes the competitive bid on the basis outlined to him by the management of the mill. The basis is as follows: Rice millers determine the price to make their bid to a producer for his rough rice based on the prevailing market price for milled rice

computing the values to the different grades and by-products obtained from the processing of the rough rice being bid upon. *For example:*

A lot (parcel) of rough rice, estimated to produce (per barrel of 162 pounds) the following articles, grades, classes, etc., when processed, with estimated values as set out for each of the respective grades, classes, etc.:

Fancy Head Rice—100 pounds at 4½c	$4.50
Second Head Rice—4 pounds at 3c	.12
Screenings Rice—6 pounds at 2½c	.15
Brewers Rice—2 pounds at 2c	.04
Total yield per barrel—112 pounds.	
Total value	$4.81 plus
Approximate revenue from by-products (25c per barrel of 162 pounds)	.25
Total revenue	$5.06

Competitive bidding basis prior to the processing tax law requiring payment of a processing tax in cash: The above $5.06 is the gross value of milled rice articles and by-products resulting from a 162 pound barrel of rough rice. The mill would deduct from this gross figure the conversion charge, this conversion figure including the mills expense for processing the rough rice, and the estimated profit. Assuming that this conversion would be 60c per barrel, the mill would then bid the producer $5.06, less the 60c conversion; or $4.46 per barrel for the rough rice. The affiants solemnly swear that they have used and seen records of various rice mills establishing the basis as outlined above.

Competitive Bidding Basis after the Processing Tax Law requiring Payment of a Processing Tax in Cash: Since the beginning of the 1933 crop movement, which

become available for market during the month of July, and on which the processing tax applies, the rice millers use the same basis to determine values; however, in addition to deducting the conversion charge, the rice millers deduct also the 1c per pound processing tax on the rough rice, or $1.62 per barrel, and submits his bid to the producer, less this deduction, as follows:

From the value of the same lot of rough rice as above illustrated, estimated to produce milled rice and by-products with gross values of $5.06 per barrel, the rice miller deducts the following: Conversion 60c and processing tax $1.62, or a total of $2.22 per barrel, and makes bid to the producer of $2.84 per barrel for that particular lot of rough rice.

The affiants further solemnly swear that in their practical experience they have prepared, and have seen prepared profit and loss statements for certain given periods other than the entire season; further that these profit and loss statements are prepared on particular lots of rice, which is essential and necessary in their accounting procedure. Should the Agricultural Adjustment Act be held unconstitutional, the affiants state that the rice processors should enjoy the remedy and benefits given by Section 21 (d) of the said Agricultural Adjustment Act, as amended August 27th, 1935, because the records of buying processing and selling kept by the rice mills are adequate enough to properly allocate the cost of various grades of milled rice and its by-products, resulting from the processing of the rough rice; also to properly allocate in this cost, the processing tax, proportionately to the various grades of each lot of milled rice sold by itself alone or mixed. The greater portion of the milled rice sales are straight mill run lots without blending.

The affiants further solemnly swear that they have kept or have seen rice millers' records which reflect correct cost of production, profits from sales, etc., properly allocated to milled rice of various varieties, and grades, and by-products, and similarly allocated as to profits in selling prices, and should the Agricultural Adjustment Act be proven unconstitutional, each rice processor has sufficient records to enable him to recover in accordance with Section 21 (d) of the Agricultural Adjustment Act, as amended.

Summed up, the introduction of the rice processing tax has in no wise altered the customary manner or procedure followed by the rice milling industry in conducting their business.

(Sgd.) L. J. BARTEL,
(Sgd.) R. F. GOULD,
(Sgd.) JAMES J. MAYER.

Subscribed and sworn to before me this 28th day of October, 1935.

(Sgd.) HOMER R. ROBINSON,
Deputy Collector.

DECREE.

Filed October 28, 1935.

(Title Omitted.)

This cause came on today to be heard upon the application of the plaintiff for a preliminary injunction, as well as upon the motion filed on behalf of the

defendant to dismiss the bill of complaint, and was argued by counsel for the respective parties;

Whereupon, and upon consideration thereof, and for the reasons orally assigned;

It is Ordered, Adjudged and Decreed that the application for the Preliminary Injunction be and the same is hereby denied;

It is Further Ordered, Adjudged and Decreed that the plaintiff's petition and bill of complaint in all respects be dismissed.

(Signed) JOHN McDUFFIE, Judge.

New Orleans, Louisiana, October 28, 1935.

MOTION FOR INJUNCTION PENDING APPEAL.

Filed Oct. 29, 1935.

(Title Omitted.)

Comes now the plaintiff in the above entitled and numbered cause and moves the Court to grant plaintiff an injunction pending appeal for the reason that, unless such injunction pending appeal is granted plaintiff, plaintiff will be compelled to pay the taxes referred to in plaintiff's petition before plaintiff's appeal can be determined by the Circuit Court of Appeals, thus causing it great and irreparable injuries. Plaintiff offers to furnish good and sufficient bond by a solvent surety company in an amount to be fixed by

the Court, if the Court should grant its prayer for injunction pending appeal.

BAKER, BOTTS, ANDREWS
& WHARTON,
By JOHN P. BULLINGTON.

Motion denied.
(Signed) JOHN McDUFFIE, Judge.

MOTION OF PLAINTIFF FOR APPEAL AND ORDER ALLOWING SAME.

Filed Oct. 29, 1935.

(Title Omitted.)

On motion of plaintiff in the above cause, and on suggesting to the Court that plaintiff is aggrieved by the decree entered by the Court herein on the 29th day of October, 1935, granting defendant's motion to dismiss, and that plaintiff desires to appeal therefrom with a supersedeas and a stay of proceedings in the District Court, pending appeal to the United States Circuit Court of Appeals for the Fifth Circuit, and

On further suggesting to the Court that said decree is contrary to the law and the evidence for the reasons set forth in the assignment of errors filed in plaintiff's behalf herein; and

On further suggesting to the Court that this motion being filed in open Court on the entry of such decree and in the presence of counsel for defendant, no citation of appeal is necessary or need issue herein;

It is Ordered by the Court that the appeal of plaintiff from the decree entered herein to the United States Circuit Court of Appeals for the Fifth Circuit be and the same is hereby allowed with supersedeas, on appellant's furnishing bond with good and solvent surety, conditioned as required by law and to be approved by the Court in the sum of $250.00 said bond to act as a supersedeas, as well as a bond for costs and damages;

It is Further Ordered by the Court that the appeal of plaintiff from the decree entered herein be made returnable to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, on or before November 27th, 1935, and that a certified copy of the record herein be transmitted to said Court of Appeals by the Clerk of this Court, and that no citation of appeal is necessary or need issue herein.

(Signed) JOHN McDUFFIE, Judge.

ASSIGNMENT OF ERRORS.

Filed October 29, 1935.

(Title Omitted.)

Comes now plaintiff and says that, in the record in the proceedings of the said Court in the above entitled cause and in the decree made and entered therein on the 28th day of October, 1935, there is manifest error and for error the said plaintiff assigns the following:

(1) The Court erred in sustaining defendant's motion to dismiss plaintiff's Bill of Complaint, because such action was contrary to the law and the evidence.

(2) The Court erred in over-ruling and not sustaining plaintiff's motion for a preliminary injunction because said ruling was contrary to the law and the evidence.

Wherefore, plaintiff prays that said Decree be, in all things, reversed, with instructions to the said District Court to grant plaintiff a preliminary injunction.

(Signed) BAKER, BOTTS, ANDREWS & WHARTON,
By JOHN P. BULLINGTON.
Solicitors for Plaintiff.

APPEAL BOND.

Filed October 29, 1935.

Know All Men By These Presents, that we Baton Rouge Rice Mill, Inc., as principal, and The Aetna Casualty & Surety Company, Hartford, Conn., as surety, are held and firmly bound unto Rufus W. Fontenot, in the full sum of $250.00, to be paid to the said Rufus W. Fontenot, his attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents, sealed with our seals and dated this 29th day of October, 1935.

Whereas, lately, in the District Court of the United States for the Eastern District of Louisiana, judgment was rendered against Baton Rouge Rice Mill, Inc., and in favor of Rufus W. Fontenot, denying plaintiff's application for a Preliminary injunction and dismissing plaintiff's Bill of Complaint, and the said Baton Rouge Rice Mill, Inc., having obtained an appeal to reverse said judgment, citing and admonishing the said Rufus W. Fontenot to be and appear at a session of the United States Circuit Court of Appeals for the Fifth Circuit to be holden at the city of New Orleans, La., in said Circuit Court on the 27th day of November, 1935.

Now the Condition of the above obligation is such that if the said Baton Rouge Rice Mill, Inc., shall prosecute its appeal to effect and answer all damages and costs, if it fail to make its plea good, then the above obligation to be void, else to remain in full force and effect.

BATON ROUGE RICE MILL, INC.,
(Sgd.) BAKER, BOTTS, ANDREWS & WHARTON,
By JOHN P. BULLINGTON,
Principal.
THE AETNA CASUALTY & SURETY COMPANY,
Surety,
By CARL F. WEISS,
Attorney in Fact. (Seal)

Approved October 29th, 1935.
(Signed) RUFUS E. FOSTER, Judge.

PRAECIPE.

Filed October 31, 1935.

(Title Omitted.)

To the Honorable H. J. Carter, Clerk of the United States District Court for the Eastern District of Louisiana:

You will please include in the record upon appeal in the above entitled cause the following documents and procedures:

1. Plaintiff's original bill of complaint.

2. Defendant's motion to dismiss and answer.

3. Order of Court consolidating causes for trial and providing for evidence in cause No. 324 in Equity, Baton Rouge Rice Mill, Inc., vs. Rufus W. Fontenot, etc., to be considered as evidence in this cause.

4. Affidavit of W. M. Reid.

5. Affidavit of Homer L. Bruce.

6. Joint affidavit of L. J. Bartel, R. F. Gould and J. J. Mayer.

7. Decree of the District Court.

8. Plaintiff's motion for injunction pending appeal and order denying same.

9. Motion and order for appeal.

10. Plaintiff's assignment of error.

11. Appeal bond.

12. This Praecipe.

13. Clerk's certificate.

HOMER L. BRUCE,
JOHN P. BULLINGTON,
BAKER, BOTTS, ANDREWS & WHARTON,
By JOHN P. BULLINGTON,
Attorneys for Plaintiff and Appellant.

Approved:
(Sgd.) ROBERT WEINSTEIN,
Asst. U. S. Attorney, Counsel for defendant.

Clerk's Office:

I, HENRY J. CARTER, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 50 pages contain and form a full, true and complete transcript of the record, assignment of errors and all proceedings in the cause entitled "Baton Rouge Rice Mill, Inc., vs. Rufus W. Fontenot, Individually and as Collector of Internal Revenue for the District of Louisiana," No. 324 In Equity of the Docket of this Court, as made up in accordance with the Praecipe for Transcript copied herein.

Witness my Hand and the seal of the said Court at the City of New Orleans, La., this 2nd day of November, A. D. 1935.

H. J. CARTER, Clerk,

By H. W. NIEHUES,

Deputy Clerk.

(Seal)

[fol. 86] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AT NEW ORLEANS, LOUISIANA

No. 7947

BATON ROUGE RICE MILL, INC., Appellant,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Appellee

MOTION FOR PRELIMINARY INJUNCTION PENDING APPEAL—Filed November 4, 1935

Comes now the Baton Rouge Rice Mill, Inc., appellant in the above numbered and entitled cause, and after due notice given to the appellee above named, respectfully states to the Court that the said appellant on the 26th day of October, 1935, brought a bill in equity in the United States District Court for the Eastern District of Louisiana, New Orleans Division, entitled Baton Rouge Rice Mill, Inc., plaintiff, v. Rufus W. Fontenot, individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, defendant, and numbered 324 in equity, in the New Orleans Division of said United States District Court. In its bill of complaint in said cause appellant prayed for a temporary restraining order to be [fol. 87] issued immediately, and for a preliminary injunction after notice to the appellee, and for a permanent injunction on the final hearing of said cause, enjoining the appellee from assessing or collecting or attempting to assess or collect from the appellant in any manner whatsoever, whether by lien or jeopardy or distraint proceedings, in court or otherwise, any processing taxes levied under and pursuant to the Act of the Congress of the United States known as the Agricultural Adjustment Act and amendments thereto, or purported to be levied by said Act, upon the appellant for the processing of rice during the month of September, 1935, and for subsequent months, and any interest or penalty on account of appellant's failure to pay said processing tax, and from imposing or giving

notice of intention to impose any lien for said taxes upon the property, real or personal of appellant. That said application for a preliminary injunction was set down for hearing before the Judge of said District Court at New Orleans on Monday, October 28, 1935. The notice thereof was duly waived by the appellee. Prior to said hearing the said appellee filed his motion to dismiss and answer to said bill of complaint, copies of which motion and also of appellant's bill of complaint are contained in the record in this cause filed in this Court.

After a hearing had on appellant's motion for a preliminary injunction and on said motion to dismiss, the Honorable John McDuffie, acting judge of said District Court on October 28, 1935, refused appellant's motion for a preliminary injunction, granted the motion of the appellee to dismiss the said bill of complaint and dismissed the said bill [fol. 88] of complaint, to which appellant herein duly excepted. Thereafter, on the 29th day of October, 1935, the appellant herein in open court and in the presence of counsel for appellee filed its petition for an appeal, which was duly allowed by the said judge of the said United States District Court who tried said cause, and filed at the same time its assignments of errors, and also a cost bond was duly filed and approved by the said judge of said District Court. At the time appellant presented its said petition for appeal, it also petitioned said judge of the District Court to grant it an injunction enjoining the appellee in the manner set out in its request for a preliminary injunction in its bill of complaint, pending the appeal of appellant to this Honorable Court, but the said judge of said District Court on October 29, 1935, refused appellant's said petition and refused to grant appellant said injunction pending said appeal.

Appellant has therefore perfected its appeal to the Circuit Court of Appeals for the Fifth Circuit, making said cause returnable at New Orleans, Louisiana, as provided by law. Appellant has duly caused to be prepared a transcript of the record in said cause and has filed the same, in accordance with law, and within the time allowed by law, in the Clerk's office in the Circuit Court of Appeals at New Orleans, Louisiana.

In said bill of complaint appellant alleged that the amount of processing taxes on account of the rice processed by the

appellant during the month of September, 1935, was $51,259.14, and that under said Agricultural Adjustment Act appellant was required to pay said amount to appellee on or before October 30, 1935, and that appellee was charged with the duty of collecting said tax, and if said tax were [fol. 89] not paid on or before October 30, 1935, appellee would assess said tax against the appellant and serve upon appellant notice and demand for the payment thereof and would allow appellant ten days from receipt of such notice within which to pay the same; that in the event said tax should not be paid within said time, appellee would assess against appellant a penalty equal to 5% of the amount of the tax and interest on the tax at the rate of 1% per month from the due date of the tax until paid; that if the appellant failed to pay the tax within said ten days, appellee would proceed to collect the tax, penalty and interest by filing a notice of lien on all of appellant's property and by distraining upon and selling such of appellant's property as might be necessary to realize the amount of said tax, penalties and interest; and that additional processing taxes for months subsequent to September, 1935, will accrue and be assessed against and collected from the appellant in the same manner as the tax for the month of September.

Appellant alleged that the said processing tax was illegal and unconstitutional, and violated various provisions of the Constitution of the United States in many particulars, more fully set forth in appellant's bill of complaint. The appellant also alleged that under an amendment to said Agricultural Adjustment Act approved on August 24, 1935, a Section 21 (d) was added to said Act, which section provides in substance that appellant should be allowed no recovery of any of said taxes paid, if the same should be illegal or unauthorized, unless appellant established to the satisfaction of the Commissioner of Internal Revenue, and [fol. 90] the Commissioner should so find, that neither appellant nor any person directly or indirectly under appellant's control or having control over appellant, has, directly or indirectly, included such amount in the price of the rice with respect to which it was imposed or of any article processed from the rice with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing rice, and

that the price paid by the appellant or such person for said rice was not reduced by any part of such amount. Appellant in said bill of complaint, alleged, as more fully set out in said bill of complaint, that under said Section 21 (d) it had no adequate remedy at law by which it could recover any part of said taxes if same were unconstitutional and illegal, and that it was impossible, owing to the peculiar conditions existing in the rice milling industry and in the purchase, milling and sale of rice, for appellant to discharge the burden placed upon it by said Section 21 (d), all as more fully set out in appellant's bill of complaint.

Appellant further alleged that in said amendment of August 24, 1935, a new section known as Section 21 (a) was added to said Agricultural Adjustment Act, which in substance provided that no suit to enjoin the collection of said processing taxes should be maintained in any court. Appellant further alleged that said section was not intended to apply, and did not apply, to the injunction prayed for by appellant, inasmuch as appellant had no adequate remedy at law. Appellant further alleged that if said section should be interpreted as prohibiting the injunction [fol. 91] prayed for by appellant, then the said section, together with the other provisions of said Act, was invalid and in violation of the Fifth Amendment to the Constitution, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes would be collected from appellant and appellant would have no remedy by which he could recover taxes and would have no remedy to prevent the collection of said unlawful taxes and would be forever deprived of the right to test the constitutionality of said taxes.

Appellant further alleged that said Section 21 (d) denied the appellant a complete and adequate remedy at law for the various other reasons set forth in said bill of complaint.

At the hearing before the District Judge appellant introduced in evidence the affidavit of W. M. Reid, Executive Secretary of The Rice Millers Association, a man of twenty-six years experience in the rice business, in which affidavit he set out fully and in detail the methods of conducting the rice business and the manner in which the rough rice market and the clean rice market is made, showing that it would be utterly impossible for any rice miller to accurately determine whether he had made a profit or a loss on any

given transaction, much less prove whether he had passed the tax, or any part thereof, on. Appellant also introduced in evidence the affidavit of Homer L. Bruce, a practicing attorney at the bar at Houston, Texas, setting out in detail the proceedings under a complaint brought by the Secretary of Agriculture to revoke the license of a rice mill under the Act in effect prior to the present Act. The Secretary of Agriculture sought to revoke the license of this mill for [fol. 92] failure to sell clean rice and rice products processed from rough rice at a price approximately 79c higher than the price paid for the rough rice. The affidavit showed that although the Government was able to prove the cost of the rough rice and to trace the particular rough rice into various "mixes" of clean rice and the price procured for these "mixes" of clean rice it was never able to prove that the price procured for the clean rice processed from the particular lot of rough rice was not 79c more than the price paid for the rough rice because of the fact that clean rice is customarily sold in "mixes" of various lots of rice and there was no way to allocate the price procured for the mixed rice sold to the various lots of rough rice which went into the mix.

In the meantime, appellant alleges that for the foregoing reasons and those set forth in its said bill of complaint in said cause, and because the judge of said court in his said order dismissed said bill of complaint and refused to grant appellant the injunction prayed for pending the appeal in this case, the appellee herein will, to the irreparable damage and loss of the appellant herein, proceed to collect the said taxes for September, 1935, which are now due and unpaid, from appellant, and said taxes for subsequent months, unless restrained by a preliminary injunction granted by this court. The appellant alleges that not only has it no complete remedy at law, but in fact no remedy at law at all, for the reasons hereinabove set forth and set forth more in detail in said bill of complaint, that it is faced with the alternative of paying the tax with the certainty that no remedy at law exists for its recovery in case it be held that it was unconstitutionally assessed, or of refusing to pay [fol. 93] and running the risk of becoming liable for the heavy civil and criminal penalties provided in the Act, and that the said judge of said District Court should not have dismissed said bill of complaint, but should have over-

ruled the same, and upon the hearing should have granted the preliminary injunction as prayed for in said bill of complaint.

Appellant would further show that there is now pending in the Supreme Court of the United States a case involving the constitutionality of the said Agricultural Adjustment Act, being the same case in which the Circuit Court of Appeals for the First Circuit declared the Act to be unconstitutional, and that the Supreme Court, according to press dispatches, has set said cause for oral argument on Monday, December 9, 1935; that a decision by the Supreme Court of the United States upon the validity of the said Act may be expected within a reasonable time thereafter; that the first benefit payment to farmers provided for in said Act has been made, and that under the standard form of contract between the Secretary of Agriculture and rice farmers no further payment is due until such time after December 1, 1935, as the Secretary shall determine and declare what further amount of benefit payments shall be made and when they shall be made; that the taxes to be collected under said Act are for the purpose of making these benefit payments and that since the Secretary of Agriculture need make no further benefit payments until such time after December 1, 1935, as may be fixed by him, the delay of the Government in collecting these taxes which might be occasioned by the granting of the injunction prayed for herein will not occasion any injury to the Gov-
[fol. 94] ernment nor will it unduly interfere with the achievement of the program set out in said Act if the Act be held constitutional. On the other hand, as hereinabove alleged, great and irreparable damage will be done to plaintiff in the event the law is held unconstitutional unless the injunction hereinafter prayed for is granted.

Appellant further shows that unless an injunction pending appeal be granted so as to preserve the *status quo*, the subject-matter of the suit will be lost and the jurisdiction of this Honorable Court defeated. Such injunction is necessary to preserve the jurisdiction of this Honorable Court, and in order that appellant may enjoy the just fruits of a favorable decision on this appeal.

The appellant states that it is ready and willing to give any reasonable bond or other security that may be required by any order of this Court, including the deposit from

month to month of the amount of tax due, in a depository to be designated by the court, and therefore prays that this Court make an order granting appellant a preliminary injunction enjoining and restraining the appellee from assessing or collecting or attempting to assess or collect from appellant in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in court or otherwise, the said processing taxes for the month of September and subsequent months and any other processing taxes under and pursuant to said Agricultural Adjustment Act upon rice processed by appellant, and any interest or penalty on account of appellant's failure to pay said processing taxes, and from imposing or giving notice of intention to [fol. 95] impose any lien for said taxes upon the property, real or personal, of the appellant, pending the hearing of appellant's appeal in this case and upon such conditions and terms as to this Court may seem just.

Homer L. Bruce. John P. Bullington. Baker, Botts, Andrews & Wharton, of Counsel.

[fol. 96] *Duly sworn to by John P. Bullington. Jurat omitted in printing.*

[fol. 97] IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 7947

BATON ROUGE RICE MILL, INC.,

versus

RUFUS W. FONTENOT, Acting Collector of Internal Revenue

ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION PENDING APPEAL—November 5, 1935

Upon the authority of Rickert Rice Milling Company, Inc., vs. Rufus W. Fontenot, etc., the application for injunction in the above numbered and entitled case is denied.

[fol. 98] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7937

RICKERT RICE MILLING COMPANY, INC., Appellant,

versus

RUFUS W. FONTENOT, Acting Collector of Internal Revenue, Appellee

Appeal from the District Court of the United States for the Eastern District of Lousiana

Motion for Preliminary Injunction Pending Appeal

Before Foster and Sibley, Circuit Judges, and Strum, District Judge

OPINION—November 5, 1935

By the COURT:

On consideration of the application for an injunction to stay collection of taxes levied under the provisions of the Agricultural Adjustment Act, as amended by the Act of August 24, 1935, the Court is of the opinion that the taxpayer has a remedy at law to recover back any taxes illegally [fol. 99] exacted and, further, that the provisions of the Act as amended deprive the Court of jurisdiction to grant injunctive relief.

It is ordered that the application be Denied.

[fol. 100] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 101] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 25, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is

granted, and the case is assigned for argument on Monday, December 16, next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 40,134. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 580. Baton Rouge Rice Mill, Inc., petitioner, vs. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana. Petition for a writ of certiorari and exhibit thereto. Filed November 11, 1935. Term No. 580, O. T., 1935.

CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 581

T. SIMON, PETITIONER,

vs.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 11, 1935.

CERTIORARI GRANTED NOVEMBER 25, 1935.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 581

T. SIMON, PETITIONER,

vs.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 6, 1935.

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UNITED STATES OF AMERICA.

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

No. 325 (In Equity).

T. SIMON

versus

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA.

Appearances:

Messrs. Baker, Botts, Andrews & Wharton; John P. Bullington, Attorneys for T. Simon, Plaintiff-Appellant.

Rene A. Viosca, Esq., United States Attorney and Robert Weinstein, Asst. U. S. Attorney, appearing on behalf of Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Defendant-Appellee.

APPEAL from the District Court of the United States for the Eastern District of Louisiana, to the United States Circuit Court of Appeals for the Fifth Circuit, returnable within thirty (30) days from the 29th day of October, 1935, at the City of New Orleans, Louisiana.

TRANSCRIPT OF RECORD.

BILL OF COMPLAINT & EXHIBITS ANNEXED.

Filed Oct. 28, 1935.

In the District Court of the United States, Eastern District of Louisiana, New Orleans Division.

T. Simon

vs. No. 325 (In Equity).

Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana.

To the Honorable Wayne G. Borah, Judge of the United States District Court, for the Eastern District of Louisiana:

Comes now T. Simon, hereinafter referred to as plaintiff and in the neuter singular, complaining of Rufus W. Fontenot, individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, hereinafter called defendant, and for cause of action shows to the Court as follows:

1.

Plaintiff is a resident of Crowley, Acadia Parish Louisiana, and is a citizen of the State of Louisiana. The defendant is a citizen of the State of Louisiana residing at New Orleans, Louisiana, and is the duly appointed, commissioned, qualified and Acting United States Collector of Internal Revenue for the State of Louisiana.

2.

The grounds of jurisdiction of this Court in this case are that this is a suit arising under the Constitution of the United States and the laws of the United States, in of the United States and the laws of the United States, in which the matters in controversy exceed Three Thousand Dollars ($3,000.00), and this suit is also one in which an injunction is sought against an official of the United States to prevent him from unlawfully collecting processing taxes levied by the United States pursuant to certain acts of Congress, more fully set out hereinafter, and to have declared invalid and unconstitutional said acts of Congress in so far as they attempt to provide for the levy, assessment and collection of said processing tax.

3.

Plaintiff is engaged in the business of milling rice and owns and operates a rice mill at Crowley, Louisiana. The milling of said rice, which constitutes processing of said rice under the terms of the Agricultural Adjustment Act, hereinafter referred to, is done wholly within said State and is a matter of intrastate commerce exclusively, being performed in its entirety within the limits of said State wherein plaintiff's rice mill is established and operated.

4.

There was adopted by the 73rd Congress and approved on May 12, 1933, an Act, P. L. No. 10, popularly known as the "Agricultural Adjustment Act," but officially entitled:

"An Act to relieve the existing national Economic emergency by increasing agricultural purchasing power,

to raise revenue for extraordinary expenses incurred by reason of the emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint stock land banks, and for other purposes."

and said Act with its amendments, for convenience hereinafter, will be referred to by its popular title, namely, the Agricultural Adjustment Act.

Said Agricultural Adjustment Act has been amended several times and particularly by an amendment approved August 24, 1935, which amendment is hereinafter referred to as the Amendment of August 24, 1935.

5.

The policy to be effectuated by the enactment of said Act, prior to the Amendment of August 24, 1935, was declared by Congress in Section 2 to be as follows:

"It is hereby declared to be the policy of Congress—

(1) To establish and maintain such balance between the production and consumption of argicultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. The base period in the case of all agricultural commodities except tobacco shall be the prewar period, August 1909-July 1914. In the case of tobacco, the base period shall be the postwar period, August 1919-July 1929.

(2) To approach such equality of purchasing power by gradual correction of the present inequalities there-

in at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets.

(3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the prewar period, August 1909-July 1914."

By said Amendment of August 24, 1935, Subsection (1) of said Section 2 was amended by inserting at the beginning thereof the words

"Through the exercise of the powers conferred upon the Secretary of Agriculture under this title."

and Subsections (2) and (3) were stricken out and the following inserted in lieu thereof:

"(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section."

Plaintiff alleges that under no provision of the Constitution of the United States is the Congress of the United States authorized to provide for said processing taxes for the purpose of accomplishing any of

said policies above set forth, and the levy, assessment and collection of said taxes have been provided for in said Act, not for the purpose of raising revenue, but for the purpose of accomplishing the things set out in said declaration of policy of Congress and for said reasons the levy, assessment and collection of said taxes are wholly illegal, unlawful and unwarranted under the Constitution of the United States.

6.

Section 8 of said Agricultural Adjustment Act provides in substance that, in order to effectuate the declared policy of the Act, the Secretary of Agriculture shall have power to provide for a reduction and adjustment in the acreage and production for market, or both, of any basic agricultural commodity, including rice, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith, in such amounts as the Secretary finds best calculated to effectuate the declared policy of the Act, to be paid out of the moneys hereinafter referred to.

Section 9(a) of said Agricultural Adjustment Act levies the processing taxes thereinafter provided. It then provides that when the Secretary of Agriculture determines that any one or more payments (including said rental or benefit payments) authorized to be made under Section 8 of said Act or to be made with respect to any basic agricultural commodity, he shall proclaim such determination and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation. Said Act, however, provided that with respect to rice the processing tax for the period from April 1, 1935, to July 31, 1936, should be at the rate of 1c

per pound of rough rice. Under a similar provision of said Act before being amended by the Amendment of August 24, 1935, the Secretary was directed to proclaim, and did proclaim, before April 1, 1935, that rental or benefit payments would be made with respect to rice and the processing tax of 1c per pound of rough rice would be in effect on and after April 1, 1935.

Section 9(b) of said Agricultural Adjustment Act provides that the processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, as those terms are defined in the Act, plus such percentage of such difference, not to exceed 20 per centum, as the Secretary may determine will result in the collection in any marketing year of an amount of tax equal to (A) the amount of credits or refunds which he estimates will be allowed during such period with respect to the commodity and (B) the amount of the tax which he estimates would have been collected during such period upon all processings of such commodity exempt from tax because such processings are done by or for a State or a political subdivision or an institution thereof, except that the processing tax on rice for the period above mentioned should be at the rate of 1c per pound of rough rice.

Section 12(a) of said Act, prior to the Amendment of August 24, 1935, appropriated the sum of $100,000,000.00 to be available to the Secretary of Agriculture for administrative expenses under Title 1 of said Act and for rental and benefit payments made with respect to reduction in acreage or reduction in production for market under Part 2 of said Title 1. Section 12(a) of said Act, after said amendment, appropriated the said sum of $100,000,000.00 to the Secretary for administrative expenses under Title 1

and for payments authorized to be made under Section 8, including said rental and benefit payments made with respect to adjustment and reduction in acreage or production for market of basic agricultural commodities, including rice.

Section 12(b) of said Act, prior to said Amendment of August 24, 1935, provided that, in addition to said $100,000,000.00, the proceeds derived from all processing taxes imposed under said Title 1 were appropriated to be available to the Secretary of Agriculture for expansion of markets and removal of surplus agricultural products and administrative expenses, rental and benefit payments, and refunds on taxes. Section 12 (b) of said Act as amended by said Amendment of August 24, 1935, provided that, in addition to said $100,000,000.00 a further sum was appropriated to be available to the Secretary of Agriculture for payments authorized to be made under said Section 8, including said rental and benefit payments, said sum so appropriated to be equal to the proceeds derived from all processing taxes imposed under said Act.

7.

Acting pursuant to the purported authority given to him under said Agricultural Adjustment Act, the Secretary of Agriculture under date of April 18, 1935, through R. G. Tugwell, the then acting Secretary of Agriculture, promulgated certain rulings relating to the 1935 Southern Rice Production Adjustment Program, a copy of which rulings is attached hereto as Exhibit A and made a part hereof as if fully copied herein at this point. Under said rulings the Secretary of Agriculture allotted acreage to be planted in rice and barrels of rice to be produced, (a barrel being defined as being one hundred sixty-two pounds of rough rice)

in the States of Arkansas, Louisiana and Texas as follows:

	Acres.	Barrels.
Arkansas	135,000	1,834,722
Louisiana	364,500	3,898,333
Texas	142,500	2,010,833

Said rulings provided for a State Committee appointed by the Secretary of Agriculture for each State and for various forms and applications to be filled out by those desiring to produce rice and to be filed with the said State Committee. Said rulings provided that the base period for Texas should be the years 1931 to 1933, inclusive, and for Arkansas and Louisiana should be the years 1929 to 1933, inclusive. Said rulings further provided that the said State Committee should make an allotment to a producer applying to the Secretary of Agriculture through said State Committee for permission to grow rice during the year 1935, by taking the average acreage planted by such producer during the base period applicable to him and by reducing this result by 20% in Arkansas and in Louisiana and by 22% in Texas; and should give an allotment or permission to said producer to plant said 80% (in the case of Arkansas and Louisiana) or 78% (in the case of Texas) of the average acreage planted by him during said base period. Said rulings further provided for said State Committee to allot to each such producer a quota of barrels of rice that he might produce during the year 1935 by allotting to him 80% (if in Arkansas or Louisiana) or 78% (if in Texas) of the average number of barrels of rice raised by him during said base period.

If a producer had produced rice during any of the years constituting his base period, he was eligible to obtain an allotment and a quota from said State Committee, and if he should obtain such allotment and

quota, he was then eligible to execute a contract with the Secretary of Agriculture in the form shown by Exhibit B attached hereto and made a part hereof for all purposes as if copied in full at this point. If said producer executed said contract and it was accepted by the Secretary, he was then eligible for the benefit payments to be made by the Secretary as provided for in said agreement. However, if a producer had not produced rice during any of the years constituting his base period, he was not eligible to execute said contract with the Secretary and was not eligible for the benefit payments provided for therein. Likewise, if a producer did not execute such contract, or if he executed such contract and it was not accepted by the Secretary, he was not eligible for the benefit payments as provided for therein.

Plaintiff alleges that said processing taxes were not levied under the taxing power of the United States and for the purpose of raising revenue, but were levied for the purpose of raising money with which the Secretary of Agriculture could make rental or benefit payments to producers of agricultural products, including rice, and for the purpose of controlling, regulating, and reducing the amount of acreage that would be planted to rice and the amount of rice that would be grown, and to accomplish the purposes set out in Section 2 of said Act, and that the Congress of the United States had no authority under the Constitution of the United States to levy said processing taxes for said purpose and for said objects.

8.

Section 8 further provides that, in order to effectuate the declared policy of the Act, the Secretary is empowered to provide for a reduction in acreage or a reduction in production of any

basic agricultural commodity through agreements with producers, and to provide for rental or benefit payments in connection therewith in such amounts as the Secretary deems fair and reasonable, but there is no standard or measure established or provided in said Act by which the said Secretary shall be guided in providing for said reduction in acreage or production or in the amount of the rental or benefit payments, and said provisions are wholly invalid and violative of Article 1 of the Constitution of the United States which vests all of the legislative power in the Congress of the United States and is an invalid and unconstitutional delegation of legislative power by Congress to the Secretary of Agriculture.

Plaintiff further alleges that the Secretary has made no findings whatsoever, and if he has made any such findings, they are wholly insufficient to support his action in providing said method of reduction of acreage and production of rice as above set forth, and his said regulations and provisions concerning said reduction of acreage and reduction of production and amounts of benefit payments are wholly arbitrary and unsupported by any findings, or at least any sufficient findings, by the Secretary of Agriculture and are not authorized by said Act or the Constitution of the United States.

9.

Section 9(b) of said Act provides that if the Secretary of Agriculture has reason to believe that the processing tax levied on any commodity will cause such reduction in the quantity of such production domestically consumed as to result in the accumulation of surplus stock thereof or in the depreciation of the farm price of the commodity, then he shall cause an investigation to be made on due notice and opportunity for hearing to interested parties, and if thereupon the

Secretary finds that such result will occur, then the processing tax on such commodity shall be at such rate as will prevent such accumulation of surplus stock and depreciation of said farm price. Said provision applies to the processing tax levied upon rice. Said provision sets no proper standard by which the Secretary shall be guided in determining the rate of the processing tax on rice or how long said tax of one cent (1c) per pound shall remain on rice, and the continuation of said processing tax being dependent upon said action by the Secretary, said provision is an unconstitutional delegation of legislative power to the Secretary of Agriculture in violation of Article 1 of said Constitution vesting the legislative power in the Congress, and for said reasons the said Act in levying said processing tax is void and illegal.

10.

In addition to the foregoing reasons, the said Agricultural Adjustment Act and its provisions for the leyying, assessment and collection of said processing taxes upon rice processed by this plaintiff are void, illegal and in violation of the Constitution of the United States for the following reasons:

1. They are an attempt and effort by the United States to regulate, control and reduce the production of certain agricultural commodities specified in said Act, including rice. The so-called processing taxes imposed by said Act are an integral part of the scheme, attempt and effort of regulating, controlling and reducing the production of such commodities, which attempt, effort and scheme is not within the scope of any of the powers vested in the Congress by the Constitution, and if said power exists as a governmental function, it is therefore within the powers reserved to the States as expressly provided by the Tenth Amendment to the Constitution.

2. The so-called processing taxes were not imposed under or in conformity with the power vested in the Congress by Section 8 of Article 1 of the Constitution to levy and collect taxes, duties, imposts and excises, in that they are not imposed to pay the debts or to provide for the common defense or the general welfare of the United States, but were imposed for the benefit of a particular class of individuals, namely, the producers of the various agricultural commodities specified in said Act who conform to the conditions laid down in said Act.

3. The said Act and provisions for the levy, assessment and collection of said processing taxes violates the provisions of the Fifth Amendment to the Constitution since the so-called processing taxes constitute the deprivation of the property of one class of citizens, including the plaintiff, namely, processors of said specified commodities, including rice, without due process of law, in that such processing taxes constitute the taking of the property of this class of citizens, including the plaintiff, not for a public purpose but for a private purpose, to-wit, the payment of gratuities or bounties or benefit payments to another class of persons, namely, the producers of the designated agricultural commodities, including rice, and particularly since this taking is without just compensation to the plaintiff and said processors.

4. Said so-called processing taxes levied by the Act are taxes in name only and not in fact. They constitute merely an exactment and imposition by the Government for the purpose, not of raising revenue for the support of the government, but of raising the price for farm products and adjusting farm income and for carrying out the policy of said Act as hereinabove set forth and for the purpose of enabling the government to carry out and effectuate the said attempt, effort and scheme of the United States as hereinabove set out.

5. Under the terms of Article 1, Section 1, of the Constitution of the United States, the legislative powers granted to the Federal Government are vested in the Congress; whereas, the said Act purports to vest powers in the Secretary of Agriculture, who alone is to determine, at his own discretion and without any definite standard fixed by Congress, the method of bringing about a reduction or adjustment in acreage and production of agricultural commodities, including rice; to provide for rental or benefit payments in connection therewith in such amounts as the Secretary may deem fair and reasonable; to determine how long the said tax of 1c per pound upon the processing of rice shall remain in effect, and if the Secretary changes said rate, what rate shall be fixed. In said respects the said Act involves an invalid delegation to the Secretary of Agriculture by Congress of powers vested exclusively in it by the Constitution and because of said things the said Act delegates said legislative powers to the Secretary of Agriculture and said powers are conferred exclusively on Congress by said Article 1, Section 1; Article 1, Section 8, clause 18; Article 11, Section 1; Article 1, Section 7, clause 1; and Article 1, Section 9, clause 7 of the Constitution.

6. The said taxes if construed as direct, violate Article 1, Section 9, clause 4, and Article 1, Section 2, clause 3 of the Constitution, because not apportioned according to population.

7. The said taxes are not excise taxes, and are not uniform throughout the United States as required by Article 1, Section 8, clause 1.

8. The said alleged taxes cannot be levied under Article 1, Section 8, clause 3, regulating commerce, because neither the production nor processing of commodities, including the processing of rice done by plaintiff, is in interstate commerce and cannot be regulated

by Congress and in so far as this plaintiff is concerned, its processing of said rice is not interstate commerce and cannot be regulated by Congress.

11.

Under the terms of said Act and orders of the Secretary of Agriculture and the Secretary of the Treasury, the plaintiff is required to file returns with the defendant on or before the 30th day of October, 1935, showing the amount of rice processed by the plaintiff during the month of September, 1935, and the amount of said so-called processing tax on account of said rice processed by the plaintiff during said month, and plaintiff is required to pay said amount to the defendant on or before October 30, 1935. The amount of said processing taxes on account of the rice processed by the plaintiff during said month of September is $53,531.86. The defendant as said Collector of Internal Revenue is charged with the duty of collecting said tax, and if the plaintiff does not make said payment on or before October 30, 1935, the said defendant will assess said tax against the plaintiff and will serve upon the plaintiff notice and demand for the payment of said tax, and the plaintiff will be allowed ten days from the receipt of such notice and demand within which to pay said tax. In the event of failure to pay said tax within said time, the defendant will assess against the plaintiff a penalty equal to 5 per centum of the amount of the tax and interest on the tax at the rate of 1 per centum from the due date of the tax until it is paid; if plaintiff fails to pay said tax within the ten days after receipt of said notice and demand, the defendant will proceed to collect the tax, penalty and interest by filing a notice of lien upon all of plaintiff's property, and by distraining upon and selling such of plaintiff's property as may be necessary in order to realize the amount of said tax, penalties and interest. Additional processing taxes for the months sub-

sequent to September, 1935, will accrue and will be assessed against and collected from plaintiff, just as the processing tax for the month of September will be, in the manner described, unless the defendant is restrained and enjoined from assessing and collecting said taxes. Plaintiff has its rice mill at the place stated in paragraph 3 hereof with a large inventory of rough rice and clean rice, bank accounts and cash on hand. Repeated levies upon and distraint of its property from month to month will cause plaintiff irreparable injury and damage, in that such levies and distraints will impair the valuable good-will of its business; will seriously interfere with, if not prevent, the actual operations of its plant and the sales of its product; and will result in a permanent injury to its business and good-will. Furthermore the tax, if once paid by plaintiff, will be irretrievably lost to plaintiff, to its great and irreparable injury.

12.

Plaintiff further shows that by the Amendment of August 24, 1935, Section 30, of said amendment added a new section to the Agricultural Adjustment Act designated as Section 21, a copy of which Section 21 is attached hereto and marked Exhibit C. Plaintiff does not have an adequate and complete remedy at law as to taxes levied and assessed under said Act because of the provisions of Section 21(d) of said Agricultural Adjustment Act. Under Section 21(d) a recovery will not be allowed to the plaintiff for any amount of the tax paid by plaintiff unless it shall be established that the plaintiff has not directly or indirectly included such amount in the price of the rice with respect to which it was imposed or passed on any part of any such amount to the vendee, or included any part of such amount in the charge or fee for processing, and that the price paid by the plaintiff for rough rice was not reduced by any part of such amount.

Plaintiff states that it is an impossibility to prove or attempt to prove what portion, if any, of the processing taxes paid by it has been either deducted from the purchase price of rough rice or added to the selling price of clean rice for the following reasons:

Rice millers buy rough rice at the market price, a price that is established by the competitive bidding of the many rice millers. Rough rice is bought in large quantities and kept on an average of several months before the clean rice made from it is sold, and because of said facts the miller has no way of definitely knowing at the time of the purchase of rough rice whether he will make a profit or loss on the milling and selling of rice. A major factor in determining the market price of rough rice is the market price of clean rice at the time the rough rice is bought but there is no assurance, however, that the market price for clean rice will be the same at the time the miller actually sells the clean rice milled from the rough rice.

The miller who buys rough rice must pay the market price as established under these conditions, and has no power to fix or make the market price himself. Having no power to make prices, he cannot arbitrarily depress the market price of rice in order to pass the processing tax back to the producer.

Likewise, the miller sells the clean rice in competition with many other rice millers, and also in competition with many other food products, such as wheat, potatoes, beans and other food products, that can be substituted for rice. Under such circumstances, if the price of clean rice is pushed too high, consumers will shift to other products with the result that the demand for rice will decline until the price of rice falls to where people will buy it instead of other competitive commodities. Under these circumstances the rice miller cannot fix or make

the price for clean rice, and cannot arbitrarily increase the price of clean rice in order to pass the processing tax on to the purchaser of clean rice.

In addition, rough rice when milled produces many grades of rice and products thereof. It produces extra fancy head rice, fancy head rice, head rice, second head rice, screenings, brewers, polish, bran, and hulls, all of which commodities have varying values, extra fancy rice being the most valuable and the other grades being of less value in the order above set forth. Extra fancy, fancy, head and second head rice are generally sold for human consumption as rice. Screenings are sold to some extent for direct consumption by human beings. Brewers and screenings are a very low priced commodity and are used in general by breweries. Polish, bran and hulls are sold generally for stock feed. Some of such products, particularly brewers, polish, bran and hulls are sold practically always for a less price per pound than is paid for the rough rice per pound. There is no definite proportion by which the price paid for rough rice can be allocated in any way to these different grades of rice, so that it is impossible to tell with any degree of accuracy how much the rice and rice products that have been produced from any particular lot of rough rice have cost, making it impossible to tell what amount of the processing tax, if any, has been passed on to the purchaser of these articles.

Furthermore, the processing tax is levied upon the first processing of the rough rice and must be paid by the end of the calendar month following the month in which the processing occurred. On the other hand, when a lot of rough rice has been processed in any month, some of the grades may be sold immediately, whereas some of the other grades produced from said rice may be kept for several months before being sold, and it is thus impossible to tell how much has been

received for the clean rice and its products that are produced from any month's processing, and it is impossible to tell how much, if any, of said processing tax has been passed on to the purchaser of said clean rice.

Indeed, it is impossible even to determine whether, for any given month, the mill operations have resulted in a gain or loss and it is only at the end of the season that a gain or loss *for the season* can be determined.

In addition, in the cost of rough rice processed during any month, there is an additional item of the cost of the milling of such rice. The cost of milling rice depends upon many factors so that it is impossible to determine what has actually been the cost of milling any particular lot of rice. There are many varieties of rice, some of which have longer grains than others. Different processes of milling must be used for each different kind and variety of rice, and where the plaintiff and other millers have on hand varied and sundry varieties and kinds of rice it is necessary in the operation of the mill to change quickly from one kind of rice to another as the milling of one lot of rice is completed and the milling of another kind begun. In addition, lots of rice of the same variety will vary the one from the other due to the varying amounts of moisture in the rice, varying conditions under which the rice was harvested, and many other factors, which makes it necessary to vary the operation of the rice mill in many respects as between lots of rice. In addition, the output of a mill in barrels per day varies because of all these factors very considerably. Under all the circumstances, it is impossible for a mill to determine the cost to it of the milling of any particular lot of rice, which cost must necessarily enter into a deter-

mination of whether in selling the clean rice it has included any part, or what part, of the processing tax in the price for which it sells its clean rice and rice products.

In addition, owing to the peculiar nature of the rice business and the customary manner of selling rice that prevails in the rice industry, it is impossible for the plaintiff and other rice millers to determine the cost of any particular rice that has gone into the clean rice that is covered by any particular sale. The clean rice that is obtained from any particular lot of rough rice is not sold in the trade by itself alone. At the beginning of the season plaintiff and other rice mills know approximately the different kinds of rice that they will have during the season. In the early part of the season and as the season progresses, plaintiff and other millers make up samples of rice of the kind that they have determined they will be able to supply during the season. Owing to the varied character of clean rice out-turn from rough rice, these samples are made up of mixtures of different kinds of rice. It has been found impossible to make up such samples entirely of one kind of rice from one lot of rough rice as it is impossible to match in any appreciable quantity a sample of one lot of clean rice with another lot of clean rice. Clean rice is sold on these samples and when an order is obtained for a given amount of clean rice of a certain sample, the plaintiff and other rice millers then find what different lots of clean rice they have on hand which by mixing will produce the samples upon which the sale has been made. As a result, when a sale of clean rice is made, the order is filled by a mixture of clean rice which is made up from many different lots of clean rice. These different lots of clean rice have been milled from different lots of rough rice for which different prices have been paid. As a result the rice that goes into a clean

rice sale has come from many different sources and has been milled under many different conditions and it is impossible to tell exactly the cost of such clean rice under the circumstances. In addition, part of the clean rice obtained from a lot of rough rice may be carried for many months and mixed on different sales with innumerable combinations of other lots of clean rice so that it is impossible to trace through the history of rice processed during any month to determine what price was obtained for it, whether it was sold at a profit or a loss, and what part, if any, of the processing tax has been passed on to the purchaser.

Furthermore, there is no way in which the cost of a lot of rough rice can be allocated between the various grades of rice and the various rice products produced from such lot except by speculation for the use of arbitraries.

In short, it is impossible to determine, statistically or otherwise, where the ultimate burden of the processing tax falls—how much of it is paid by the consumer, how much by the producer, or how much by the processor.

In view of the above facts, the purported remedy given by Section 21(d) of said Agricultural Adjustment Act is wholly inadequate and is in fact a statutory denial of any legal remedy at all.

13.

In addition, the conditions imposed upon the right of the plaintiff to recover taxes paid by it must, under Section 21(d) be established to the satisfaction of the Commissioner of Internal Revenue, and no provision is made for judicial review. The transcript of the hearing before the Commissioner of Internal

Revenue is the sole record of the case on appeal to the Courts. The effect of such section is therefore to limit the function of the judicial review to the determination of whether there was any evidence submitted to the Commissioner of Internal Revenue tending to support the findings of the Commission. Said Section 21(d) therefore deprives the plaintiff of its property without due process of law in violation of the Fifth Amendment to the Constitution.

14.

Under said Section 21(d) of said Agricultural Adjustment Act, if the processing tax has been either passed on or passed back by the plaintiff, then the plaintiff cannot maintain any action to recover the tax, if it is ultimately determined to be invalid, either for its own account or for the account of the persons to whom the processing tax has been thus passed on or passed back by the plaintiff; nor can the persons to whom the processing tax has been thus passed on or passed back maintain such an action on their own account, but all right of action by anyone to recover the tax, if it has been passed on or passed back, has been wholly taken away by said amendments to said Agricultural Adjustment Act. Moreover, Section 21(a) of said Act and Section 405 of the Revenue Act of 1935 deprive the Courts of power to render declaratory judgments with respect to such alleged taxes. By reason of the impossibilities of proof hereinabove referred to, the practical effect of said Act will be to deny taxpayers and the plaintiff all means of securing a judicial decision as to the constitutionality of the processing taxes, unless the Court grants the relief herein sought.

15.

Plaintiff further shows that by Section 30 of said Amendment of August 24, 1935, Section 21(a) was

added to said Act, which in substance provides that no suit to enjoin the collection of any tax imposed by said Act shall be maintained. Plaintiff alleges that said section is not intended to apply, and does not apply, to the injunction prayed for by this plaintiff inasmuch as plaintiff has no adequate remedy at law. Plaintiff alleges, however, that if said section should be interpreted as providing that no injunction should be granted to the plaintiff as prayed for in this cause, then the said section, together with the other provisions of said Act, is invalid and in violation of the Fifth Amendment to the Constitution of the United States, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes will be collected from the plaintiff and the plaintiff will have no remedy to prevent the collection of said unlawful taxes, and will be forever deprived of the right in any manner to test the constitutionality of such taxes.

16.

Said Section 21(d) further denies to the plaintiff a complete and adequate remedy at law, because a multiplicity of claims and suits would be required to enforce such rights as are granted thereunder and because said subsection requires that the facts required to be proved thereunder be established to the satisfaction of the Commissioner of Internal Revenue and makes no provision for a judicial review of his decision.

17.

A refund of processing taxes paid by the plaintiff could not actually be obtained even if it were possible for the plaintiff to prove the negative facts required by subsection (d) of Article 21, because Congress has

not appropriated funds for the payment of such refunds and plaintiff believes, that in view of the aggregate amount involved, there is a reasonable doubt whether such appropriation would ever be made.

18.

Plaintiff is ready, able and willing and hereby offers and agrees that in the event the injunctive relief herein prayed for is granted, it will deposit at such time and in such manner as this Court shall direct the said sums claimed to be due from plaintiff for processing taxes on account of the rice processed by plaintiff during the month of September, 1935, and the plaintiff further offers and agrees that at the end of each month hereafter it will file processing tax returns with the defendant as required by existing laws and regulations and that as and when processing taxes under said returns become due and payable according to existing laws and regulations or any extension lawfully granted to the plaintiff, it will deposit the amount of such taxes in such manner as the Court may direct, all such deposits to abide the final decree in this cause.

Wherefore, plaintiff being without an adequate remedy at law prays:

1. That process issue and be served upon the defendant requiring him to appear and answer this bill, but not under oath, and answer under oath being hereby expressly waived;

2. That pending the hearing of the application for a preliminary injunction hereinafter prayed for, a temporary restraining order issue immediately enjoining and restraining the defendant until the hearing of its application for a preliminary injunction or until

the further order of this Court, from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in Court or otherwise, any processing taxes under and pursuant to said Agricultural Adjustment Act and any interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

3. That notice issue to the defendant advising him that plaintiff is hereby applying for a preliminary injunction and that plaintiff's said application will be heard at a time to be fixed by the Court in said notice, and that upon said hearing a preliminary injunction pending the final disposition of this case be issued enjoining and restraining the defendant from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in Court or otherwise, any processing taxes under and pursuant to said Agricultural Adjustment Act and any interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

4. That at the final hearing of this cause said preliminary injunction shall not have been granted, then that a permanent injunction be granted permanently restraining and enjoining the defendant from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in Court or otherwise, any processing taxes under and pursuant to said Agricultural Adjustment Act and any

interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

5. That at the final hearing it be adjudicated that the provisions of said Agricultural Adjustment Act providing for the levying, assessing and collecting of said processing taxes against and from the plaintiff are invalid, unlawful and unconstitutional on each and every one of the grounds upon which they are hereinabove alleged to be unlawful, invalid and unconstitutional; and that the defendant has no lawful right to attempt in any manner to collect said processing taxes from the plaintiff or any of the penalties or interest thereon purported to be provided for in said Agricultural Adjustment Act;

6. And plaintiff prays for such other and further relief, both general and special, to which it may be justly entitled.

(Signed) T. SIMON,
(Signed) BAKER, BOTTS, ANDREWS & WHARTON,
By JOHN P. BULLINGTON,
Attorneys for Plaintiff.

State of Louisiana,
Parish of Acadia.

Before me, the undersigned authority on this day personally appeared T. Simon, who, having been by me first duly sworn, stated on oath that he has been duly authorized by said corporation to make this affidavit for and in its behalf; that he has read the foregoing and above bill and knows the contents thereof and that the facts therein set out are true, except as to such facts as are therein stated on informa-

tion and belief, and that as to those facts so stated to be on information and belief, he believes them to be true.

(Signed) T. SIMON.

Subscribed and Sworn to before me, this 27th day of October, 1935.

(Signed) T. J. MULLER,
Notary Public in and for
(Seal) Acadia Parish, La.

EXHIBIT "A."

Filed October 25, 1935.

Issued April 18, 1935.

United States Department of Agriculture,
Agricultural Adjustment Administration.

Administrative Rulings Relating to the 1935 Southern Rice Production Adjustment Program.

Explanation.

These Administrative Rulings apply to and are part of the Southern Rice Production Adjustment Contract and documents pertaining thereto.

If any of the provisions are not understood, the Community or County Committee should be consulted. No producer should make out and submit to his Community or County Committee an Application or a Contract or other documents pertaining thereto with-

out knowing exactly what he must do in order to receive the benefits of the program.

I. Definitions.—As used in the Southern Rice Production Adjustment Application, Declaration, Contract, Schedule, and these Administrative Rulings:

(a) "Person," "tenant," "landlord," "producer," and "well or canal operator," include individuals, copartnerships, and corporations; and where it is required by the context, the singular shall include the plural.

(b) "Farm" means one contiguous tract of land operated as one unit substantially separate from any other such tract of land.

(c) "Producer" includes persons owning and operating their own farms; tenants operating farms rented for cash; tenants operating farms under a crop-share lease, contract, or agreement; landlords leasing to share tenants; corporations, copartnerships, or individuals furnishing water for production of rice on a share basis; and such other persons or classes of persons as the Secretary may determine to be eligible to sign Southern Rice Production Adjustment Contracts.

(d) "Participation in the production of rice" means sharing as a producer in any manner in the production of rice on a farm.

(e) "Farming Operation" means the production of rice or the participation in the production of rice by a producer.

(f) "Application" means any Application for Rice Acreage Allotment (forms Rice 1 and 2) heretofore or hereafter executed by any producer. "Application

serial number" means the serial number of any such Application.

(g) "Declaration" means any 1935 Southern Rice Declaration of Farm Acreage (form Rice 30) heretofore or hereafter executed by any producer. The "farm serial number" means the serial number of any such Declaration.

(h) "Schedule" means any Producer's Schedule of Rice Acreage (Form Rice-37) heretofore or hereafter executed by any producer. Each such Schedule shall bear the same serial number as the Contract executed by the producer who executes the Schedule.

(i) "Contract" means any 1935 Southern Rice Production Adjustment Contract (Form Rice-36) heretofore or hereafter executed by any producer. The "Contract serial number" means the serial number of any such Contract.

(j) "1935" means the period from January 1, 1935, to December 31, 1935.

(k) "1934" means the period from January 1, 1934 to December 31, 1934.

(l) The term "State base period" means the period of calendar years 1929 to 1933, inclusive.

(m) The "State Allotment" shall be 135,000 acres for Arkansas, 364,500 acres for Louisiana, and 142,500 acres for Texas. The "State Quota" shall be 1,834,722 barrels for Arkansas, 3,898,333 barrels for Louisiana, and 2,010,833 barrels for Texas.

(n) The term "base period" in Arkansas and Louisiana means the period of the calendar years

1929 to 1933, inclusive, and in Texas the years 1931 to 1933, inclusive.

(o) The "production history" of a producer means, as the context may require, the producer's rice acreage or rice production, or both, for the base period as adjusted to the official figures and accepted by the State Committee.

(p) The "producer's Allotment" and the "producer's Quota" means respectively the rice acreage and the rice production assigned by the State Committee, acting for and on behalf of the Secretary, to the producer for 1935 and determined according to the procedure set forth in Administrative Ruling II hereof.

(q) The "acreage allocated" by the producer means that part of a producer's allotment which, in a Declaration, he allocates to a given farm as a basis for determining his share of the total rice acreage planted on that farm in 1935.

(r) "Producer's share of the rice acreage planted" and the "Producer's share of the acreage planted to rice in 1935" each means with respect to any farm, that acreage which bears the same ratio to the total rice acreage planted on that farm in 1935 (as determined upon checking compliance with the Contract in the manner prescribed by the Secretary) that the acreage allocated by the producer to that farm in a Declaration bears to the total rice acreage allocated to that farm in such Declaration.

(s) The "Secretary" means the Secretary of Agriculture of the United States.

(t) "Rice Section" means the Rice Section of the Agricultural Adjustment Administration.

(u) "Official figures" means the records of acreage and production prepared by the United States Department of Agriculture.

(v) A "barrel" means 162 pounds of rough rice.

(w) A "bushel" means 45 pounds of rough rice.

II. Determination of Allotments and Quotas.—1. The allotment of a producer shall be determined by each State Committee as follows: (a) Add the acreage of rice planted annually by each producer for his own account during the base period, after adjustment of acreage of all producers to the official figures for each state for each of the years of the base period; (b) Divide the total thus secured by five (5) in Louisiana and in Arkansas, and the total thus secured by three (3) in Texas; (c) Reduce the result obtained by 20 per cent in Louisiana and in Arkansas and the result obtained by 22 percent in Texas.

The total allotments assigned to producers in each state shall not in any event exceed the state allotment for that state.

2. The quota of a producer shall be determined by each State Committee as follows: (a) Add the number of barrels of rough rice produced annually by each producer for his own account during the base period, after adjustment of the production of all producers to official figures for each state for each of the years of the base period; (b) Divide the total thus secured by five (5) in Louisiana and in Arkansas, and the total thus secured by three (3) in Texas; (c) Reduce the result obtained by 20 percent in Louisiana and in Arkansas and the result obtained by 22 percent in Texas.

The total quotas assigned to producers in each state shall not in any event exceed the state quota for that state.

3. If the total of allotments and quotas determined according to the provisions of sections 1 and 2 of this numbered ruling, in any state, is less than the State Allotment and State Quota such excess may be allocated to producers by the State Committee, subject to approval by the Secretary or his authorized agent.

4. The Allotment and Quota are based upon the personal production history of the producer, regardless of where the rice was produced and are the measure of such history. The producer's production history shall not be transferred except as the State Committee shall, in writing, approve transfers made pursuant to the provisions of subsections a, b, and c of this numbered paragraph 4 of Administrative Ruling II. All requests for transfer of production history shall be in writing, signed by, or on behalf of the producer by his duly authorized agent, and approval thereof shall be in writing signed by at least two members of the State Committee. In no event shall the State Committee approve the transfer of production history by reason of foreclosure, execution or any forced sale.

(a) If a producer has died or has been declared legally incompetent by a Court of competent jurisdiction and has not executed, prior to the date of such death or incompetency, an Application for an allotment and quota, his records of production may be used by such heirs or devisees, or such member of the family of such deceased producer or by such members of the family of such incompetent producer as are continuing the farming operation of the deceased or incompetent producer, upon their furnishing proof of such relation-

ship and succession to the producer's farming operation.

(b) If a well or canal operator voluntarily sells his well or canal system and has not executed an application, his production history shall be transferred to such successor, provided that the former well or canal operator was not engaged in farming operations in 1934.

(c) If a partnership is dissolved before an application for an allotment and quota has been executed by or on behalf of the partnership, its records of rice production for the base period shall be divided among the partners in such proportions as is agreed upon by the partners or their authorized representatives in writing submitted to the State Committee.

5. In all figures representing final determination of individual allotments and quotas, fractions amounting to one-half a unit or less shall be dropped and fractions amounting to more than one-half a unit shall be considered a whole unit.

6. If a producer during the base period had operated in more than one state, he shall apply for an allotment and quota to the State Committee of each state in which he had farmed during the base period. Only the history earned by the producer in that state shall be presented to the State Committee in his Application. No producer shall be assigned Allotments and Quotas in two or more states, larger in the aggregate, than the Allotments and Quotas assignable to him in one state, had all of his farming operations been confined to that one state.

7. The sum of all Allotments and of all Quotas within a State shall not in any event exceed the State Allotment and Quota, respectively.

III. Transfer of Allotment and Quota.—The producer's Allotment and Quota shall not be transferred except as the State Committee shall in writing approve transfers made pursuant to the provisions of subsections a, b, c, and d of this Ruling III. In no event shall the State Committee approve the transfer of an Allotment or Quota by reason of foreclosure, execution, or any forced sale. All requests for transfer shall be made in writing signed by or on behalf of the producer by his duly authorized agent, and approval thereof shall be in writing signed by at least two members of the State Committee.

(a) If a producer dies or has been declared incompetent by a Court of competent jurisdiction after executing an Application but before executing a Contract, his allotment and quota may be transferred to such heirs, devisees, or such members of the family of such deceased producer or such members of the family of such incompetent producer as are continuing the farming operations of the deceased or incompetent producer, upon their furnishing proof of such relationship and succession to the producer's farming operation.

(b) If a producer voluntarily withdraws, either wholly or in part, from the production of rice after executing an Application but before executing a Contract, he may transfer all or part of his Allotment and Quota to such persons as are continuing his farming operation, upon proof of such withdrawal and succession.

(c) If a producer has become disabled and has retired from the production of rice after executing an Application but before executing a Contract, he may transfer all or part of his Allotment and Quota to such

person as is continuing his farming operations upon proof of such disability, retirement, and succession.

(d) Upon dissolution of a partnership, after an Application has been executed by or on behalf of the partnership, but before a Contract has been executed by or on behalf of the partnership, the Allotment and Quota shall be divided among the partners in such proportions as is agreed upon by the partners or their duly authorized representatives in writing submitted to the State Committee.

IV. Use of Allotment and Quotas by Well or Canal Operators.—If a well or canal operator has an allotment and quota assigned to him by the State Committee on the basis of his personal history as a furnisher of water on a crop share basis, such well or canal operator shall not change his status so as to use such allotment and quota in a capacity other than as a furnisher of water on a share crop basis.

V. Signing of Application, Declaration, Contracts, and Other Documents by a Person in a Representative Capacity.—

(1.) In the event any document is to be executed on behalf of a Corporation, it shall be signed on behalf of the Corporation by an officer of the Corporation, who shall state his title, and affix the corporate seal to the Contract, (If the Corporation has no corporate seal, the following statement in writing shall appear over the signature, "No corporate seal required or adopted,") or by a representative of the corporation other than an officer, who has been authorized by the corporation to execute the contract by power of attorney, under seal, duly executed on behalf of the corporation on a prescribed form and filed with the Comptroller of the Agricultural Adjustment Administration at Washington, D. C., or

attached to the contract, which authorization shall be considered a part of the contract documents.

(2) In the event a document is to be signed by an executor, administrator, guardian of an incompetent person, receiver, or other person appointed by a Court in a fiduciary capacity, there shall be furnished either the original or a certified copy of the Court order of appointment or a certificate on a prescribed form showing that such person was duly appointed as such fiduciary and that the appointment is still in full force and effect.

(3) Where a document is signed by a manager or an agent for a producer, the original or a certified copy of a Power of Attorney, on a prescribed form, authorizing the manager or agent so to sign shall be furnished.

(4) If the producer is a Governmental body or agency, there shall be attached to the document a certified copy of a resolution of the Board or other authority authorized by statute to lease and contract in regard to the land and personal property covered by the contract, authorizing the execution of such document by the person executing the document on its behalf.

(5) When one producer has several documents to be signed by the same agent or attorney, a properly executed power of attorney may be filed with the Comptroller of the Agricultural Adjustment Administration to cover all such cases, and shall be considered as a part of each document so signed.

(6) A document to be signed for a partnership shall be executed in the name of the partnership and of each partner as an individual, by each member of

the partnership, or on behalf of each partner who does not personally sign, by an agent duly authorized to so sign by a Power of Attorney, on a prescribed form.

VI. Pledge of Adjustment Payments.—Adjustment payments may not be assigned under any condition. This is forbidden by the Contract, as well as prohibited by law.

However, the producer's right to adjustment payments under the Contract may be pledged in order to obtain funds (or credit) for carrying on the current operation of the farm. The expression "funds" (or credit) for carrying on the current operation of the farm and "current production credit" means funds or credit to meet any necessary expense of preparing of land, planting, cultivating, watering, harvesting, and marketing of the rice crop grown in the year 1935. Without in any way limiting the exclusiveness of the above definition, the expression shall not include cash rent or debts incurred in connection with the production of past crops.

No pledge of any producer's right to adjustment payments under his contract for any purpose other than to procure current production credit as defined above shall give rise to any obligation under the Contract upon any payee designated therein by the producer to distribute such payment, when and if accepted by such payee, to the person claiming to hold such a pledge not given for current production credit.

Dated April 18, 1935.

R. G. TUGWELL,
Acting Secretary of Agriculture.

EXHIBIT "B".

Filed Oct. 25, 1935.

Form Rice 36,
U. S. Department of Agriculture,
Agricultural Adjustment Administration,
Rice Section.
Form approved by Comptroller General, U. S.,
May 1, 1935.

1935 Southern Rice Production Adjustment Contract.

(Pursuant to and to effectuate the purposes of the Agricultural Adjustment Act, approved May 12, 1933, as amended, hereinafter referred to as the Act.)

I. Performance by Producer:

1. The undersigned producer (and each and all of them if more than one signs this instrument) hereby offer(s) to enter into a contract with the Secretary of Agriculture (hereinafter referred to as the "Secretary"), upon the terms and conditions hereinafter set forth and subject to such regulations or administrative rulings (which shall be part of the terms and conditions of this contract) as have been heretofore or may hereafter be prescribed by the Secretary relating to 1935 Southern Rice Production Adjustment Contracts. This contract shall apply to every farm upon which the producer participates in any manner in the production of rice in 1935 (hereinafter referred to as "the farm(s) covered by this contract"). This offer shall become a binding contract upon its acceptance by the Secretary.

2. The producer,

(a) Represents that he has allocated to each farm upon which he will participate in any manner in the production of rice in 1935 some part of his allotment and that the total acreage allocated by the producer to all such farms does not exceed his allotment;

(b) Agrees that he will not share or participate in any manner in the production of rice in 1935 on any farm to which he has not allocated a portion of his allotment;

(c) Agrees that for the purposes of checking compliance and making payments under this contract "the producer's share of the acreage planted to rice in 1935" on each farm covered by this contract shall be that acreage actually planted to rice on such farm in 1935 which bears the same ratio to the total acreage planted to rice on such farm in 1935 that the acreage allocated by the producer to such farm bears to the total acreage allocated thereto by all persons participating in the production of rice thereon;

(d) Agrees that his total share of the acreage planted to rice in 1935 on all the farms covered by this contract shall not exceed his allotment;

(e) Agrees that the acreage permitted under this contract to be planted to rice in 1935 shall be farmed in a workmanlike manner throughout 1935;

(f) Applies for membership in the Rice Production Control Association organized pursuant to Form Rice 35 in each County or Parish in which a farm covered by this contract is located;

(g) Agrees to permit access by any authorized agent of the Secretary to the farm(s) covered by this contract, and to all fiscal books, records, and documents, regardless of where located, pertaining to the

production and/or sale of rice on or from any and all of such farms, and expressly waives any right to have such records kept confidential;

(h) Agrees not to sell, pledge, transfer, or assign, in whole or in part, this contract or his right to or claim for payments under this contract, and not to execute any power of attorney to collect such payments, and any sale, pledge or assignment, order or power of attorney shall be null and void, except that the producer may pledge or hypothecate his right to any adjustment payments under this contract for the purpose of obtaining funds (or credit) for carrying on the current operation of the farm(s) covered by this contract (hereinafter referred to as "current production credit") and such pledge or hypothecation shall operate to establish an interest or right on the part of the pledgee in and to said adjustment payments as against any other person or persons, but the pledge or hypothecation thereof shall not alter the provisions of paragraph 5 that all adjustment payment checks drawn in compliance with this contract shall be made payable to the payee therein stipulated. If the adjustment payments herein provided for shall have been pledged by the producer for current production credit, the producer, or if a payee is designated in paragraph 5 hereof and accepts such payment, then such payee if notified in writing of the pledge, shall receive the adjustment payment in trust to pay therefrom to the pledgee the amount of the obligation owing for current production credit secured by such pledge and to pay the balance of said payment to the producer. If a payee other than the producer is named in paragraph 5 hereof, and if such payee shall not have been notified of any pledge of the adjustment payments for current production credit made pursuant to the terms of this numbered paragraph, such payee shall receive such payments in trust to pay the whole amount

thereof to the producer, it being expressly understood and agreed that the Secretary shall have no duty or obligation to see that distribution is made in accordance with the foregoing provisions, but shall have the right to enforce the performance of said trust by the payee;

(i) Represents that the statements contained herein are true to the best of his information and belief. Without limitation of any other right or remedy of the Secretary conferred by law or this contract, a material misstatement herein or in any information furnished by the producer in connection with this contract or any noncompliance by the producer with any of the terms hereof, or with any applicable regulation or administrative ruling which has been or may hereafter be prescribed by the Secretary with reference to 1935 Southern Rice Production Adjustment Contracts shall be grounds for termination of this contract by the Secretary. The determination of the Secretary that any such misstatement or noncompliance has occurred shall be final and conclusive. In the event of termination of this contract by the Secretary, the producer shall return to the Secretary all payments theretofore made under this contract, together with all costs incident to the collection thereof.

II. Performance by Secretary:

3. Amount of Payments.—The Secretary shall, as a consideration for the performance by the producer of all the terms and conditions of this contract, and in the manner and at the times specified in paragraph 4 hereof, make

(1) A first adjustment payment at a rate of 81 cents per barrel of rice, and

(2) A second adjustment payment at a rate per barrel of rice, uniformly applicable to all such contracts, to be determined by the Secretary,

upon an amount of rice determined in the manner specified in sub-paragraph (a) or (b) of this numbered paragraph, whichever shall apply:

(a) If the producer's total share of the acreage planted to rice in 1935 on all the farm(s) covered by this contract is not more than 100 per cent nor less than 85 per cent of the producer's allotment, such payments shall be made upon that number of barrels of rice which equals 85 per cent of the producer's quota.

(b) If the producer's total share of the acreage planted to rice in 1935 on all the farm(s) covered by this contract is less than 85 per cent of the producer's allotment, such payments shall be made upon that number of barrels of rice which bears the same ratio to the producer's quota that the producer's total share of the acreage planted to rice in 1935 on all such farms bears to the producer's allotment.

4. Time of Payments.

(a) The first adjustment payment shall be made as soon as practicable after August 1, 1935, provided that proof satisfactory to the Secretary, of compliance with the terms and conditions of this contract, has been submitted to the Secretary or his authorized agent.

(b) The second adjustment payment shall be made as soon as practicable after December 1, 1935, provided that proof satisfactory to the Secretary, of compliance with the terms and conditions of this contract, has been submitted to the Secretary or his authorized agent.

5. (a) All adjustment payments hereunder are for the benefit of the producer and shall be made only to the producer unless the producer shall, by naming another person in this numbered paragraph, direct that such payments be made to the person so named, in which event the payments shall be made by check drawn payable to the person so named who shall receive them subject to the provisions of this contract, and particularly subject to the provisions of subparagraph (h) of paragraph 2 hereof. If the person so named shall have died or shall refuse to accept such payment, or shall for any reason be unable to receive and distribute such payment subject to the provisions of this contract then such payment shall be made to the producer, who likewise shall receive such payments subject to the provisions of this contract and particularly subject to the provisions of subparagraph (h) of paragraph 2 hereof.

(Stamp State and County code above.)

State..... Parish } .....
County }

Community..... Contract }
Serial No. } .....

5. (b) Designated payee .....
of.....
(Address of payee)

III. Signature(s) of Producer(s).

6. In Witness Whereof, each of the undersigned has hereunto set his hand on the date indicated opposite his signature.

...., 1935.
(Witness) (Date of Producer's signature)

....
(Signature of Producer) (Application No.)

Address of Producer (Rural Route No.) .... (Box No.) .... (Post Office) ..... (State) .....

...., 1935.
(Witness) (Date of Producer's signature)

....
(Signature of Producer) (Application No.)

Address of Producer (Rural Route No.) .... (Box No.) .... (Post Office) ..... (State) .....

IV. Certification of Committees.

We Hereby Certify that we have examined the foregoing offer and that, to the best of our information and belief, the total acreage allocated by the producer to all the farm(s) covered by this contract does not exceed the producer's allotment, and hereby recommend that the foregoing offer be accepted by the Secretary.

.....
(For Community Committee)

.....
(For County Committee)

.....
(For State Committee)

.....
(For Community Committee)

.....
(For County Committee)

.....
(For State Committee)

Date....., 1935. Date....., 1935. Date....., 1935.

V. Acceptance by Secretary.

In consideration of and in reliance upon the agreements of the producer herein set forth and the repre-

sentations made by the producer in and in connection with this contract, this offer is hereby accepted, this .....day of ....., 1935.

HENRY A. WALLACE,
Secretary of Agriculture, for and on behalf of the United States,

By .....,
Representative of Secretary of Agriculture.

VI. State Committee's Certificate of Compliance.

The undersigned State committeemen certify that the producer's total share of the acreage planted to rice in 1935 on all farm(s) covered by this Contract does not exceed the producer's allotment, and further certify that the producer's allotment and quota and the producer's total share of the acreage planted to rice in 1935 on all farms upon which the producer is participating in the production of rice in 1935 are correctly stated in items 1, 2, and 3, respectively, of part VIII below, and further certify that to the best of their information and belief the producer has fully complied with all terms of this Contract and all regulations and administrative rulings issued by the Secretary applicable up to and including the date of this certificate.

Date ....., 1935.

.....
(For State Committee)

.....
(For State Committee)

VII. Producer's Certificate of Compliance.

The producer certifies that his total share of the acreage planted to rice in 1935 on all farms upon which he is participating in any manner in the production of

rice does not exceed his allotment, that his allotment and quota, and his total share of the acreage planted to rice in 1935 on all farms on which he is participating in any manner in the production of rice in 1935 are correctly stated in items 1, 2, and 3, respectively, in part VIII of this contract, and further certifies that he is not sharing in the production of rice on any farms covered by this Contract are being farmed in a workmanlike manner, and that he has fully complied with all other terms of this Contract, and with all regulations and administrative rulings issued by the Secretary, applicable up to and including the date of this certification.

..... (Witness)
Date....., 1935.

....,
(Producer.)

VIII. Certified Basis for Determining Payments.

1. Producer's allotment .....(acres) .....
2. Producer's quota .....(bbl.) .....
3. Producer's share of acreage measured .....
4. Quota percentage (item 3 ÷ item 1).... .....%*
5. Number of barrels for payment (item 4 times item 2) ....

*If the above percentage is not more than 100 nor less than 85 per cent, then 85 per cent shall be used.

Do not write in this blank; for use by Comptroller's Office.

Computation of payments:

1935 first adjustment payment Item 5 times 81¢ per bbl..... .....$.....

1935 second adjustment payment, Item 5 times ....¢ per bbl.....$.....

Total .....$.....

Do Not Write in Space Below.

Certificate of Comptroller.

Audited and approved for 1935 first adjustment payment in the amount of ..... $.....

JOHN B. PAYNE,
Comptroller,

By .....,
Auditor.

Schedule No. .....
Date.....

Paid ..... by check on Treasurer of the United States in favor of payee or payees named thereon.

Check No..... $.....

Certificate of Comptroller.

Audited and approved for 1935 second adjustment payment in the amount of ..... $.....

JOHN B. PAYNE,
Comptroller,

By .....,
Auditor.

Schedule No. .....
Date.....

Paid ..... by check on Treasurer of the United States in favor of payee or payees named thereon.

Check No..... $.....

(Any intentional misrepresentation of fact made in this contract for the purpose of defrauding the United States will be subject to the criminal provisions of the United States Code.)

EXHIBIT "C".

Filed October 25, 1935.

Sec. 21. (a) No suit, action, or proceeding (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any Court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (d) of this section, may be reserved in the Court's order.

(b) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regulations of the Secretary with the approval of the President prior to the date of the adoption of this amendment,

are hereby legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which have accrued and remain unpaid on the date of the adoption of this amendment shall be assessed and collected pursuant to section 19, and to the provisions of law made applicable thereby. Nothing in this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary of Agriculture or of the President done or made prior to the date of the adoption of this amendment.

(c) The making of rental and benefit payments under this title, prior to the date of the adoption of this amendment, as determined, prescribed, proclaimed and made effective by the proclamations of the Secretary of Agriculture or of the President or by regulations of the Secretary, and the initiation, if formally approved by the Secretary of Agriculture prior to such date of adjustment programs under section 8 (1) of this title, and the making of agreements with producers prior to such date, and the adoption of other voluntary methods prior to such date, by the Secretary of Agriculture under this title, and rental and benefit payments made pursuant thereto, are hereby legalized and ratified, and the making of all such agreements and payments, the initiation of such programs, and the adoption of all such methods prior to such date are hereby legalized, ratified, and confirmed as fully to all intents and purposes as if each such agreement, program, method, and payment had been specifically authorized and made effective and the rate and amount thereof fixed specifically by prior Act of Congress.

(d) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the Court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be refunded or credited to any person (not

a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (a) and (b) of section 16, had the tax terminated by proclamation pursuant to the provisions of section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish to the satisfaction of the Commissioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the Court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any Court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held invalid a claim therefor (conforming to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2)

no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such Courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, on jurisdiction of such Courts based upon the amount in controversy.

(e) In connection with the establishment, by any claimant, of the facts required to be established in subsection (d) of this section, the Commissioner of Internal Revenue is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda, relative to any matter affecting the findings to be made by the Commissioner pursuant to subsection (d) of this section, to require the attendance of the claimant or of any officer or employee of the claimant, or the attendance of any other person having knowledge in the premises, and to take, or cause to be taken, his testimony with reference to any such matter, with power to administer oaths to such person or persons. It shall be lawful for the Commissioner, or any collector designated by him, to summon witnesses on behalf of the United States or of any claimant to appear before the Commissioner, or before any person designated by him, at a time and place named in the

summons, and to produce such books, papers, correspondence, memoranda, or other records as the Commissioner may deem relevant or material, and to give testimony or answer interrogatories, under oath, relating to any matter affecting the findings to be made by the Commissioner pursuant to subsection (d) of this section. The provisions of Revised Statutes 3174 and of Revised Statutes 3175 shall be applicable with respect to any summons issued pursuant to the provisions of this subsection. Any witness summoned under this subsection shall be paid, by the party on whose behalf such witness was summoned, the same fees and mileage as are paid witnesses in the Courts of the United States. All information obtained by the Commissioner pursuant to this subsection shall be available to the Secretary of Agriculture upon written request therefor. Such information shall be kept confidential by all officers and employees of the Department of Agriculture, and any such officer or employee who violates this requirement shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both, and shall be removed from office.

(f) No refund, credit, or abatement shall be made or allowed of the amount of any tax, under section 15, or section 17, unless, within one year after the right to such refund, credit, or abatement has accrued, a claim for such refund, credit, or abatement (conforming to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled to such refund, credit, or abatement, except that if the right to any such refund, credit, or abatement accrued prior to the date of the adoption of this amendment, then such one year period shall be computed from the date of this amendment. No interest shall be allowed or paid, or included in any judgment, with respect to any such claim for refund or credit.

(g). The provisions of section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax, or any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of section 317 of the Tariff Act of 1930.

RETURN TO RULE TO SHOW CAUSE WHY TEMPORARY INJUNCTION SHOULD NOT ISSUE.

Filed Oct 28th, 1935.

(Title Omitted.)

To the Honorable the Judge of the District Court of the United States in and for the Eastern District of Louisiana:

Now into Court comes Rufus W. Fontenot, Acting Collector of Internal Revenue, Defendant in the above entitled and numbered cause, through Rene A. Viosca, United States Attorney in and for the Eastern District of Louisiana, and Robert Weinstein, Assistant United States Attorney for said District, his attorneys, and by virtue of the rules and practice of this Court requiring the defendant in rule to file all defenses to the rule on the date set for the hearing on the application for a temporary injunction, and with full reservation of all of his rights under the pleadings in this cause,

answers the rule by stating that for lack of sufficient information to justify a belief he denies all of the allegations of paragraph two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen of the Bill of Complaint, and also denies the allegations of paragraph one with the exception of the statement relative to the defendant, which statement is admitted.

Your Respondent further avers that the proceedings should be dismissed for the reasons that this Honorable Court has no jurisdiction and that the Agricultural Adjustment Act is constitutional, valid and enforceable.

Wherefore, your Respondent prays this Honorable Court to dismiss the Bill of Complaint at Complainant's costs and to refuse granting any injunction in these proceedings, and for all general and equitable relief.

(Signed) RENE A. VIOSCA,
United States Attorney.
(Signed) ROBERT WEINSTEIN,
Asst. United States Attorney.

(Verification.)

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, personally came Rene A. Viosca, who is the United States Attorney for the Eastern District of Louisiana, who in his oath says: That in his aforesaid official capacity he is of counsel for defendant in the above case; that he has drawn the return to the rule to show cause and that all the allegations of fact therein are true and correct to the best of his knowledge, information and belief.

(Signed) RENE A. VIOSCA.

Sworn to and subscribed before me this 28th day of October, 1935.

(Signed) CLAUDE D. SHAW,
Deputy Clerk, U. S. District Court, Eastern District of Louisiana.

MOTION TO DISMISS

Filed Oct. 28, 1935.

(Title Omitted.)

To the Honorable, the Judge of the District Court of the United States in and for the Eastern District of Louisiana:

Comes now Rufus W. Fontenot, Acting Collector of Internal Revenue, defendant in the above entitled and numbered cause, by Rene A. Viosca, United States Attorney in and for the Eastern District of Louisiana, and Robert Weinstein, Assistant United States Attorney for said District, his attorneys, with full reservation of his rights to further plead in this cause, and moves the Court to dismiss the Bill of Complaint filed herein, with costs to be paid by the Complainant upon the following grounds and for the following reasons:

I.

That this Court is without jurisdiction to restrain or enjoin the collection of taxes herein involved, or to hear and/or determine the issues presented by said bill of complaint because:

1. Section 3224 of the Revised Statutes of the United States prohibits the maintaining in any Court of a suit for the purpose of restraining the assessment and/or collection of Federal Tax.

2. Section 21-A of the Agricultural Adjustment Act, as amended, prohibits the maintaining in any Court of a suit for the purpose of restraining the assessment and/or collection of any processing tax under the said Agricultural Adjustment Act.

3. The bill of complaint sets forth no facts which, if true, would entitle complainant to the relief prayed for in a Court of Equity.

4. Complainant has a plain, adequate and complete remedy in the ordinary course of law.

II.

That the United States of America is the real party in interest, which may not be sued without its consent.

III.

That there is no actual controversy between complainant and defendant or between any parties over which this Court has jurisdiction within the purview of the Declaratory Judgment Act.

IV.

That the Declaratory Judgment Act was not intended by the Congress to be used for the litigation of questions arising under the Revenue Laws, and particularly was not intended as a means for obtaining injunctive relief.

V.

This proceeding is prohibited by the provisions of the Declaratory Judgment Act, as amended, and cannot be maintained. (Revenue Act of 1935, approved August 31, 1935, Section 405).

Dated: this 28th day of October, 1935.

(Sgd.) RENE A. VIOSCA,
United States Attorney.

(Sgd.) ROBERT WEINSTEIN,
Assistant United States Attorney.

ORDER OF COURT CONSOLIDATING ALL CASES FOR TRIAL, ETC.

Filed Oct. 28, 1935.

United States District Court, Eastern District of Louisiana, New Orleans Division.

Docket No. 321—In Equity:

Rickert Rice Mills, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 322—In Equity:

A. B. Dore, doing business under the name of The Dore Rice Mill,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 323—In Equity:

United Rice Milling Products Co., Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 324—In Equity:

Baton Rouge Rice Mill, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 325—In Equity:

T. Simon
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 326—In Equity.

Levy Rice Milling Company, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 327—In Equity:

Farmers Rice Milling Company, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 328—In Equity:

Noble-Trotter Rice Milling Co., Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Considering the stipulation and agreement of counsel for all parties made this day in open Court;

It is Ordered that the above numbered and entitled cases be and they are hereby consolidated for the

purpose of trial and that the affidavits and evidence offered in one case be considered to apply to all.

(Signed) JOHN McDUFFIE, Judge.

New Orleans, Louisiana, October 28, 1935.

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, on this day personally appeared W. M. Reid, known to me, who being by me first duly sworn in terms of law deposed and said on his oath as follows:

My name is W. M. Reid. I reside in New Orleans, Louisiana, and am Executive Secretary of the Rice Millers' Association. My principal duties are the preparation and interpretation of statistical and economic data with regard to the rice milling industry. I have been engaged in the rice milling business since 1909, and from 1916 to 1928, I personally operated a rice mill. I am thoroughly familiar with the rice milling industry in all of its phases.

I have read all of the allegations contained in Section 12 of Plaintiff's bill of complaint and Equity 321, Rickert Rice Milling Company vs. Rufus W. Fontenot, Equity 322, A. B. Dore vs. Rufus W. Fontenot, Equity 323, United Rice Milling Products Company, Inc., vs. Rufus W. Fontenot and companion cases, and all of such allegations are true and correct in every respect.

It is true that rice millers, when they purchase rough rice, consider the fact that they will have to pay a processing tax on the milling of such rough rice. However, this is simply one of the many factors entering into the miller's determination of what he ought to

pay for rough rice. As a practical matter, when the rice miller negotiates for the purchase of a given lot of rice, he first estimates what he believes he could get for such rice after milling on the existing market for clean rice and rice products. He then estimates what he thinks it will cost him to process the rough rice into its various grades and products, and in this estimate is included the amount of the processing tax, as well as other taxes. Having made these estimates, he determines what he ought to pay for the rough rice. However this is not necessarily what he does pay, because each individual miller is buying in competition with other millers. Thus, if other millers are paying more than he thinks he ought to pay, he has to meet the price the others are paying, if he is to get any rice. No individual miller makes the rough rice market. It is a market made of the composite purchasing of all millers in the particular territory. While the estimates above referred to are made with regard to the market for clean rice and rice products at the time of the purchase of the rough rice, that market, however, does not necessarily control since rough rice is not ordinarily milled, and the clean rice and products sold until several months after the purchase of the rough rice.

Since the market for clean rice and rice products fluctuates from day to day and month to month; the prospects of the future market has a bearing on what the miller may have to pay for rough rice. Optimism with reference to the future market for clean rice on the part of a sufficient number of rice millers will force up the market for rough rice, and all millers will have to meet the increased price of rough rice (if they are to have any rice at all), even though some of them may be pessimistic as to the future market.

For example, the present market price of rough rice is quite high with reference to the present market price for clean rice and rice products. In other words, using the estimates above referred to, the cost

of rough rice on today's market plus estimated cost of milling (including the processing tax) is more than the miller could reasonably expect to procure for the rice and rice products made from such rough rice on the existing market for clean rice and rice products. This present day market for rough rice is not made by any individual miller, but is made by the composite of purchases by all millers in the territory. Thus, as I have previously said, while the processing tax is considered by the miller in determining what he ought to pay for rough rice, it is simply one of many factors entering into such determination, and is by no means controlling.

Furthermore, it is impossible to tell on any given purchase of rough rice how much, if at all, that price has been affected by the existence of the processing tax.

I am familiar with accounting and statistical methods, and I know of no possible method of keeping books and records in the rice business which would accurately reflect the gain or loss from the purchase, milling and sale of any given lot of rice as distinguished from the gain or loss from the aggregate of all transactions during a season. A profit or loss, however, may be estimated at any given time by the use of averages, predictions and arbitraries.

The rice milling business is seasonal; the season beginning on August 1st and ending on July 31st, the operations gradually increasing until the peak is reached during the months of October, November and December, and decreasing to the end of the season. For this reason as well as others, the cost of milling varies greatly from time to time during the season. The estimated cost of milling which millers use in budgeting and determining what they want to pay for rough rice is arrived at by averaging the cost of the entire season so that this factor, when used to estimate a profit or loss on a given transaction, could never be exact, and might be very

much too high or very much too low when applied to that particular transaction.

Under these circumstances, when a miller purchases a particular lot of rice, he may believe that all, or a part of the processing tax to be assessed on such rice will be absorbed by the farmer. On the other hand, he may believe that all, or a part of such tax will be absorbed by himself. However, he can never even know, much less prove, even after all the clean rice and rice products made from the particular lot of rough rice has been sold, whether he, or the farmer, or the purchaser, or all of them together has borne the ultimate economic burden of the tax. This is because any belief he may have had as to whether the burden of the tax would fall, must of necessity, have been based in part on estimates, which are in turn, based on averages, which are never accurate with respect to any given lot of rice. In addition, such belief must also be based in part on assumptions as to market conditions on clean rice and rice products, which may or may not be correct. The rough rice may go through the mill on a day when large amounts are being milled, and the cost per unit is lower than the average; or, it might go through on a day when little rice was being milled resulting in a unit cost higher than the average; or, it might go through partly on one kind of a day, and partly on another. Furthermore, the rice may not mill out what he expected, even if the market on clean rice and rice products remains the same. And, in addition, the price at which he eventually sells the clean rice and rice products may be substantially less or substantially more than the sale price on which he based his presumptions.

There is no necessary relation between the market for clean rice and for rice products, since they are sold for different purposes, and this is an added reason why the miller cannot possibly allocate the cost of a given lot of rough rice among the clean rice and rice products produced from it.

For example, it is entirely possible for the market on bran or hulls to be relatively high, while the market on the various grades of head rice is relatively low.

The rough rice market is affected by the clean rice and rice products market and vice versa, but it is as impossible to determine their relative affect on each other as it is to determine whether the hen or the egg came first. I know of no way of determining what either the rough rice or clean rice marked would be if there were no processing tax. I do know, however, that the individual miller cannot force down the price paid to the farmer for rough rice because of the tax, and thus force the farmer to pay all, or a part of the burden of the tax. The individual miller simply pays the market price for rough rice which has been fixed by the composite action of all millers, and it would be impossible to prove whether a lowering of the rough rice market was the result of the assessment of the tax, or whether it was caused by other factors, such as a drop in time clean rice and rice products market, a composite pessimism on the part of rice millers as to the future market or other factors. The same thing is true with regard to the market for clean rice and rice products, and no individual miller can arbitrarily force that market upwards in order to pass on the tax.

(Sgd.) W. M. REID.

Sworn and subscribed to before me, the undersigned authority, this 28 day of October, 1935.

(Sgd.) HARRY R. CABRAL.
(Seal) Notary Public.

State of Texas,
County of Harris.

Before me, the undersigned authority, on this day personally appeared Homer L. Bruce, who, having been by me duly sworn, stated on oath as follows:

He lives in Houston, Harris County, Texas, and is duly licensed and practicing attorney at law. He is

familiar with the bills of complaint that are being presented to the United States District Court at New Orleans, Louisiana, on behalf of certain rice millers of Louisiana seeking an injunction against the collection of processing taxes on rice, having worked with his partner Mr. John P. Bullington in the preparation of said bills of complaint, and is familiar with the general practice of the rice industry of selling rice on samples and the filling of orders for clean rice by mixing rice from different lots of clean rice in the manner set out in the bills of complaint.

This affidavit is made in connection with the allegations in said bills that it is impossible for the plaintiff rice millers to comply with the requirements of Section 21 (d) of the Agricultural Adjustment Act that they shall establish that no part of the processing tax has been passed on to the consumer or taken out of the price paid the producer before they are allowed to recover any processing taxes paid.

Section 8 (3) of the Agricultural Adjustment Act gave the Secretary of Agriculture authority to issue licenses to processors, including processors of rice, and provided that the Secretary should have the right to revoke any license for violations of its terms. Section 8 (2) of the same Act authorized the Secretary to enter into marketing agreements with processors.

In the fall of 1933, the Secretary entered into a marketing agreement with members of the southern rice milling industry, and at the same time issued a license applicable to all mills. This marketing agreement and the license were in substantially the same form. Later various amendments were made to both the marketing agreement and the license.

In the marketing agreement and in the license, the Secretary of Agriculture fixed the price to be paid to farmers for rough rice, these prices being set out in Article III of the marketing agreement and license hereinafter referred to, namely, the one effective on July 21, 1934. Article IV, Section 1 of the license

effective July 21, 1934, set out the minimum price that millers might sell clean rice for in the domestic market and that section is as follows:

"Section 1. To effectuate the purposes of this Amended license and to aid in the carrying out and enforcement of the provisions hereof, no miller shall offer for sale, sell or deliver for domestic consumption any quantity of clean rice for an amount per pocket less than the sum of

(a) the minimum price, determined pursuant to article III and Schedule 1, for the grade, variety and quantity of the rough rice from which such clean rice was milled,

(b) the conversion charge for such quantity of rough rice and prevailing at the time of such offer, sale or delivery, and

(c) the published car lot rail rate for transporting such rough rice from the customary point of delivery to the miller's mill, and

(d) the administrative assessment for such quantity of rough rice and prevailing when such rice was milled;

Provided, however, that any miller may offer clean rice for sale for export to foreign countries, on the foregoing basis less a maximum discount of 20 cents per barrel of such rough rice and may, if the rice is actually exported, sell or deliver clean rice for export to foreign countries on said basis less said maximum discount. The determination of the Millers Committee as to whether or not clean rice is actually exported

shall be final and conclusive, subject to appeal to the Secretary. Said minimum amounts, below which this section provides that clean rice shall not be offered for sale, sold, or delivered by a miller, apply f. o. b. the miller's mill.

Sec. 2. The conversion charge per barrel of rough rice shall, until and except as changed by the Secretary, be an amount equal to the sum of (a) seventy (70) cents per barrel of rough rice, (b) nine (9) cents per barrel of rough rice if standard one-hundred pound single packages are used for the clean rice, and (c) if cotton or paper inner linings or regular burlap outer slips are used for the clean rice, an additional five (5) cents per barrel of rough rice, or (d) if any other type of container is used for the clean rice, the actual invoice price for the container used. The Secretary may at any time and from time to time during the effective period, increase or decrease the amount of, and/or change the basis of computation of, the conversion charge."

One of the main purposes, if not actually the main purpose, of the Agricultural Adjustment Act and this license was to increase the price of rough rice paid the farmer, and in order to keep the rough rice price at a higher level, the Secretary attempted by this Section 1 to fix the price that clean rice might be sold at as roughly 79¢ per barrel above the cost of the rough rice. It was extremely important to keep the clean rice up to this level in order to maintain the rough rice price. In the fall of 1934, the Secretary of Agriculture brought proceedings, according to the information and belief of the affiant, against a number of different rice mills in Louisiana and to affiant's knowledge against Bay City Rice Mills of Bay City, Texas, a partnership composed of W. M. Loving and three other partners. The case against the Bay City Mills was case No. 11-1-7, entitled In the Matter of W.

M. Loving, R. Q. Pegram, S. M. Clements and L. D. Clements, Individually and as Co-partners trading under the name Bay City Rice Mills. One of the original charges against the Bay City Rice Mills was Charge No. 11, which charged in general terms that the Mill had sold clean rice for domestic consumption for an amount less than the price fixed for the sale of the clean rice pursuant to this license. This Charge 11 was later made more specific as follows:

"11. That the said Licensee since the effective date of said License has violated Section 1 of Article V of said License as in effect until July 21, 1934, 12:01 A. M. Eastern Standard Time, and Section 1 of Article IV of said License as in effect from July 21, 1934, 12:01 A. M. Eastern Standard Time on, in that said Licensee has offered for sale, sold and delivered, for domestic consumption, quantities of clean rice, to-wit: Clean rice lot numbered 36 on the books of the respondent derived from rough rice lot numbered 33 on the books of the respondent and purchased from C. E. Everitt; clean rice lot numbered 43 on the books of the respondent derived from rough rice lot number 33 on the books of the respondent and purchased from C. E. Everitt; clean rice lot numbered 123 on the books of the respondent derived from rough rice lot numbered 153 on the books of the respondent and purchased from A. P. Powers clean rice lot numbered 124 on the books of the respondent derived from rough rice lot numbered 154 on the books of the respondent and purchased from J. R. Reed; for an amount per pocket less than the price fixed for the sale of such clean rice pursuant to said Section 1 of Article V of said License as in effect up until July 21, 1934, 12:01 A. M. Eastern Standard Time, and pursuant to said Section 1 of Article IV of said License as in effect from July 21, 1934, 12:01 A. M. Eastern Standard Time on."

The affiant, together with Mr. W. E. Davant of Bay City, Texas, represented the Bay City Rice Mills in this hearing before the representatives of the Secretary of Agriculture on these charges, which hearing was held in Houston, Texas, and again on December 27, 1934, and ran through January 2, 1935.

The Bay City Rice Mills in that proceeding took the position, and so advised the Secretary of Agriculture's representatives, that it was utterly impossible, owing to the manner in which the rice industry is conducted, through the sale of clean rice on samples made up of mixes of different lots of clean rice, as more fully set out in the bills of complaint presented to the United States District Court at New Orleans in the processing tax suits, to determine in the case of any lot of rice, whether the clean rice had been sold for 79¢ more than the rough rice had cost, or for the amount above the cost of the clean rice that the Secretary required under Section 1 of Article IV.

The Secretary of Agriculture's representatives had access to all the books, vouchers and records of the Bay City Rice Mills, both in connection with its rough rice purchases and its clean rice sales and had several auditors continuously working on those records. The amount paid for the rough rice purchased from Evoritt, Powers and Reed, as set forth in said Charge II was established. The clean rice derived from the rough rice purchased from these three producers was traced at the hearing into the sales of clean rice into which they entered and the price of clean rice sales was established. However, owing to the fact that each quantity of clean rice that went into a sale was made up of a mixture from various lots of clean rice, which were in turn produced from various lots of rough rice bought from different producers, and owing to the fact that there was, as is usual in the rice business, an almost infinite variation in the combinations of these mixes of clean rice lots, and owing to the fact that rough rice when milled

produces different grades of clean rice, as set forth in the above mentioned bills of complaint, the Secretary of Agriculture was never able to show in that case whether or not the Bay City Rice Mills had obtained for the clean rice derived from the Evoritt, Powers, and Reed rough rice the amount (roughly 79c) above the cost of the rough rice that Article IV, Section 1, attempted to require the mill to get. Although that was one of the charges most vitally affecting the entire rice program in affiant's belief, and although the Secretary of Agriculture through his two attorneys who prosecuted the case and through his several auditors who were continuously working on the records of the Bay City Mills made every effort to prove the charge, the Secretary of Agriculture in his findings did not find that the charge had been proven and did not find that the Bay City Rice Mills had violated the license in the manner set forth in Charge 11.

Affiant believes, and on that belief states, that the reason the Secretary of Agriculture did not find that Charge 11 had been supported by any evidence was because it was utterly impossible practically to show whether clean rice had been sold for the amount above the rough rice cost that the license required.

The charge referred specifically to the sale of clean rice lots 36, 43, 123 and 124. Evidence as to the history of those clean rice lots is as set out below.

The clean rice in each case was included in various sales, each sale being represented by a separate invoice. The history of those clean rice lots was as follows: (As shown by the record in that case.)

Clean Rice Lot 36:

This rice came from rough rice lot 33 from C. E. Everitt. It was mixed with various other lots of rice and went in as a part of the rice sold and represented

by the following 9 invoices: Invoice Nos. 6615, 6622, 6634, 6639, 6645, 6767, 6770, 6771 and T-162 (R. 324-326).

The rice covered by invoice No. 6615 was made up of rice from various lots as follows:

39 pockets from lot 17, fancy
125 pockets from lot 31, fancy
200 pockets from lot 36, fancy
26 pockets from lot 33, heads
26 pockets from lot 31, heads
(R. 472.)

Invoice 6622 consisted of the following:

75 pockets from lot 26, fancy
250 pockets from lot 35, fancy
175 pockets from lot 36, fancy
(R. 475.)

Invoice 6634 consisted of the following:

148 pockets from lot 34 EP
75 pockets from lot 35 EP
75 pockets from lot 36 EP
81 pockets from lot 37 EP
68 pockets from lot 38 EP
150 pockets from lot 43 EP
201 pockets from lot 45 EP
(R. 478.)

There was no evidence whatsoever as to the different lots going to make up the rice on any of the other invoices heretofore or hereafter referred to, but each invoice represented a mix from various lots.

Clean Rice Lot 43:

This lot went into invoices 6634, 6639, 6644, T-126, T-127, T-128, and P-1006 (R. 327-329). No evidence

was introduced as to the component part of those invoices, except invoice 6634 above set forth, but they all consisted of mixes.

Clean Rice Lot 123:

This rice went into the following invoices:

Invoices Nos. 6832, 6833, T-187, T-188, 6840, T-195, 6839, T-200, 6885, 6886, T-201, T-202, T-187, T-188, and T-182 (R. 329 et seq.). No evidence was introduced as to the lots going into these invoices but they were all mixes.

Clean Rice Lot 124:

Affiant does not have the record at this time as to what invoices this lot went into but it was mixed into a number of mixed invoices.

To have traced the cost of the various lots of clean rice that went into each invoice would have been long involved and in fact practically impossible, and then to trace the cost of all rice going into all invoices into which any one of these clean rice lots went would have involved further and innumerable records and evidence.

This is further illustrated when it is noticed that a large number of rough rice lots and clean rice lots were involved, as, for example, in Charge 11 it referred to rough rice lot as high as No. 154 and clean rice lot as high as No. 124.

No charge was made that Bay City Rice Mills did not keep accurate and complete records of its operations.

Nor was any issue made as to the fact that the selling of rice by samples and mixing rice was usual and customary.

For example, Mr. F. A. Farda, who testified as a witness for the Secretary of Agriculture, and who is the Manager of Standard Rice Company, one of the largest rice milling companies in the United States, testified as follows:

"Mr. Farda:

Well, it is not common practice, in fact, it is not a practice to make a mixture just in order to put it in a warehouse and keep it. You make the mixture when you sell your rice, get ready to sell it, you sell it on a sample and then you make your composite mixture and your lots match your sample. *That is a common practice.*

"Mr. Davant:

Is it not a practice to make up these samples practically in the beginning of the season and to send them out as types?

"Mr. Farda:

The practice is to make hand mixes, and to send them samples, and when you sell on the samples you make your actual mixture, make it up." (R. 420-421.)

* * * *

"Mr. Farda:

The usual practice is, you don't make your mix until you have the rice sold." (R. 429-430.)

* * * *

"Mr. Farda:

You never make a mix until you have a sale made, because it would not be of material ad-

vantage to do so because you may not find another market for that particular blend that you make. *You therefore keep your rice in the original lots* to be in a position to make a blend of whatever the trade or market requires at that time." (R. 430.)

In connection with the above lots of clean rice, the Secretary's attorneys tried to make some allocation of the cost of rough rice to the different grades of clean rice produced as between fancy rice and head rice, but this was realized by all to be purely arbitrary allocation of cost without any real or sound basis for the same.

The above proceeding against Bay City Rice Mills was a proceeding before the Secretary of Agriculture to forfeit the license of Bay City Rice Mills for alleged violation of the license. The hearing was held before a representative of the Secretary of Agriculture.

In the foregoing affidavit the figure of 79c above rough rice cost has been referred to. That, as stated, was used only roughly. Under the license, the price for clean rice was to be the price fixed for rough rice plus the conversion charge plus the carload rail rate for transporting rough rice to the miller's mill plus the administrative assessment of 5c per barrel. The conversion charge was 70c per barrel plus 9c per barrel if standard one hundred pound single packages were used for clean rice plus 5c per barrel if cotton or paper interlinings were used. This would make the spread between the rough rice price and clean rice price approximately 89c exclusive of the freight item.

(Sgd.) HOMER L. BRUCE.

Subscribed and Sworn to before me, the undersigned authority, by Homer L. Bruce, this 27th day of October, 1935.

(Sgd.) RAYMOND REILSON,
(Seal) Notary Public in and for Harris County, Texas.

AFFIDAVIT.

State of Louisiana,
Parish of Orleans.

We, L. J. Bartel, R. F. Gould, and J. J. Mayer, each first being duly sworn, deposes and says:

That we are Deputy Collectors of the Treasury Department, Internal Revenue Service, Louisiana District, working in connection with the rice processing tax division, and that the experience of each in the rice industry, prior to becoming Deputy Collectors, is as follows: L. J. Bartel has had actual experience of approximately twenty years in buying rough rice; operation of rice milling plants, and the distribution of milled rice and by-products. R. F. Gould has had actual experience as follows: Fifteen years with the largest rice millers of the industry as Office Manager, and Chief Accountant; one year as Secretary, and auditor of a rough rice buying agency for New Orleans rice mills, and one and one-half years as traveling auditor for the Millers Committee, an agency operating under a Marketing Agreement for the Southern Rice Industry. J. J. Mayer has had approximately seven years actual experience in buying, selling and grading rough rice and distributing milled rice, and by-products. Our broad experience, as above outlined, reveals the following facts as existing in the rice milling industry:

There is no established market price on rough rice, and the method of buying the rough rice by the millers is a competitive bidding method. Each miller has his buyer, who makes the competitive bid on the basis outlined to him by the management of the mill. The basis is as follows: . Rice millers determine the price to make their bid to a producer for his rough rice based on the prevailing market price for milled rice

computing the values to the different grades and by-products obtained from the processing of the rough rice being bid upon. *For example:*

A lot (parcel) of rough rice, estimated to produce (per barrel of 162 pounds) the following articles, grades, classes, etc., when processed, with estimated values as set out for each of the respective grades, classes, etc.:

Fancy Head Rice—100 pounds at 4½c	$4.50
Second Head Rice—4 pounds at 3c	.12
Screenings Rice—6 pounds at 2½c	.15
Brewers Rice—2 pounds at 2c	.04
Total yield per barrel—112 pounds.	
Total value	$4.81 plus
Approximate revenue from by-products (25c per barrel of 162 pounds)	.25
Total revenue	$5.06

Competitive bidding basis prior to the processing tax law requiring payment of a processing tax in cash: The above $5.06 is the gross value of milled rice articles and by-products resulting from a 162 pound barrel of rough rice. The mill would deduct from this gross figure the conversion charge, this conversion figure including the mills expense for processing the rough rice, and the estimated profit. Assuming that this conversion would be 60c per barrel, the mill would then bid the producer $5.06, less the 60c conversion, or $4.46 per barrel for the rough rice. The affiants solemnly swear that they have used and seen records of various rice mills establishing the basis as outlined above.

Competitive Bidding Basis after the Processing Tax Law requiring Payment of a Processing Tax in Cash: Since the beginning of the 1933 crop movement, which

become available for market during the month of July, and on which the processing tax applies, the rice millers use the same basis to determine values; however, in addition to deducting the conversion charge, the rice millers deduct also the .1c per pound processing tax on the rough rice, or $1.62 per barrel, and submits his bid to the producer, less this deduction, as follows:

'From the value of the same lot of rough rice as above illustrated, estimated to produce milled rice and by-products with gross values of $5.06 per barrel, the rice miller deducts the following: Conversion 60c and processing tax $1.62, or a total of $2.22 per barrel, and makes bid to the producer of $2.84 per barrel for that particular lot of rough rice.

The affiants further solemnly swear that in their practical experience they have prepared, and have seen prepared profit and loss statements for certain given periods other than the entire season; further that these profit and loss statements are prepared on particular lots of rice, which is essential and necessary in their accounting procedure. Should the Agricultural Adjustment Act be held unconstitutional, the affiants state that the rice processors should enjoy the remedy and benefits given by Section 21 (d) of the said Agricultural Adjustment Act, as amended August 27th, 1935, because the records of buying processing and selling kept by the rice mills are adequate enough to properly allocate the cost of various grades of milled rice and its by-products, resulting from the processing of the rough rice; also to properly allocate in this cost, the processing tax, proportionately to the various grades of each lot of milled rice sold by itself alone or mixed. The greater portion of the milled rice sales are straight mill run lots without blending.

The affiants further solemnly swear that they have kept or have seen rice millers' records which reflect correct cost of production, profits from sales, etc., properly allocated to milled rice of various varieties, and grades, and by-products, and similarly allocated as to profits in selling prices, and should the Agricultural Adjustment Act be proven unconstitutional, each rice processor has sufficient records to enable him to recover in accordance with Section 21 (d) of the Agricultural Adjustment Act, as amended.

Summed up, the introduction of the rice processing tax has in no wise altered the customary manner or procedure followed by the rice milling industry in conducting their business.

(Sgd.) L. J. BARTEL,
(Sgd.) R. F. GOULD,
(Sgd.) JAMES J. MAYER.

Subscribed and sworn to before me this 28th day of October, 1935.

(Sgd.) HOMER R. ROBINSON,
Deputy Collector.

DECREE.

Filed October 28, 1935.

(Title Omitted.)

This cause came on today to be heard upon the application of the plaintiff for a preliminary injunction, as well as upon the motion filed on behalf of the

defendant to dismiss the bill of complaint, and was argued by counsel for the respective parties;

Whereupon, and upon consideration thereof, and for the reasons orally assigned;

It is Ordered, Adjudged and Decreed that the application for the Preliminary Injunction be and the same is hereby denied;

It is Further Ordered, Adjudged and Decreed that the plaintiff's petition and bill of complaint in all respects be dismissed.

(Signed) JOHN McDUFFIE, Judge.

New Orleans, Louisiana, October 28, 1935.

MOTION FOR INJUNCTION PENDING APPEAL.

Filed Oct. 29, 1935.

(Title Omitted.)

Comes now the plaintiff in the above entitled and numbered cause and moves the Court to grant plaintiff an injunction pending appeal for the reason that, unless such injunction pending appeal is granted plaintiff, plaintiff will be compelled to pay the taxes referred to in plaintiff's petition before plaintiff's appeal can be determined by the Circuit Court of Appeals, thus causing it great and irreparable injuries. Plaintiff offers to furnish good and sufficient bond by a solvent surety company in an amount to be fixed by

the Court, if the Court should grant its prayer for injunction pending appeal.

BAKER, BOTTS, ANDREWS
& WHARTON,
By JOHN P. BULLINGTON.

Motion denied.
(Signed) JOHN McDUFFIE, Judge.

MOTION OF PLAINTIFF FOR APPEAL AND ORDER ALLOWING SAME.

Filed Oct. 29, 1935.

(Title Omitted.)

On motion of plaintiff in the above cause, and on suggesting to the Court that plaintiff is aggrieved by the decree entered by the Court herein on the 29th day of October, 1935, granting defendant's motion to dismiss, and that plaintiff desires to appeal therefrom with a supersedeas and a stay of proceedings in the District Court, pending appeal to the United States Circuit Court of Appeals for the Fifth Circuit, and

On further suggesting to the Court that said decree is contrary to the law and the evidence for the reasons set forth in the assignment of errors filed in plaintiff's behalf herein; and

On further suggesting to the Court that this motion being filed in open Court on the entry of such decree and in the presence of counsel for defendant, no citation of appeal is necessary or need issue herein;

It is Ordered by the Court that the appeal of plaintiff from the decree entered herein to the United States Circuit Court of Appeals for the Fifth Circuit be and the same is hereby allowed with supersedeas, on appellant's furnishing bond with good and solvent surety, conditioned as required by law and to be approved by the Court in the sum of $250.00 said bond to act as a supersedeas, as well as a bond for costs and damages;

It is Further Ordered by the Court that the appeal of plaintiff from the decree entered herein be made returnable to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, on or before November 27th, 1935, and that a certified copy of the record herein be transmitted to said Court of Appeals by the Clerk of this Court, and that no citation of appeal is necessary or need issue herein.

(Signed) JOHN McDUFFIE, Judge.

ASSIGNMENT OF ERRORS.

Filed October 29, 1935.

(Title Omitted.)

Comes now plaintiff and says that, in the record in the proceedings of the said Court in the above entitled cause and in the decree made and entered therein on the 28th day of October, 1935, there is manifest error and for error the said plaintiff assigns the following:

(1) The Court erred in sustaining defendant's motion to dismiss plaintiff's Bill of Complaint, because such action was contrary to the law and the evidence.

(2) The Court erred in over-ruling and not sustaining plaintiff's motion for a preliminary injunction because said ruling was contrary to the law and the evidence.

Wherefore, plaintiff prays that said Decree be, in all things, reversed, with instructions to the said District Court to grant plaintiff a preliminary injunction.

(Signed) BAKER. BOTTS, ANDREWS & WHARTON,
By JOHN P. BULLINGTON.
Solicitors for Plaintiff.

APPEAL BOND.

Filed October 29, 1935.

Know All Men By These Presents, that we, T. Simon, as principal, and The Aetna Casualty and Surety Company, Hartford, Conn., as surety, are held and firmly bound unto Rufus W. Fontenot, in the full sum of $250.00, to be paid to the said Rufus W. Fontenot, his attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents, sealed with our seals and dated this 29th day of October, 1935.

Whereas, lately, in the District Court of the United States for the Eastern District of Louisiana, judgment was rendered against T. Simon, and in favor of Rufus W. Fontenot, denying plaintiff's application for a Preliminary Injunction and dismissing plaintiff's Bill of Complaint, and the said T. Simon, having obtained an appeal to reverse said judgment, citing and admonishing the said Rufus W. Fontenot to be and appear at a session of the United States Circuit Court of Appeals for the Fifth Circuit to be holden at the City of New Orleans, La., in said Circuit Court on the 27th day of November, 1935.

Now the condition of the above obligation is such that if the said T. Simon shall prosecute its appeal to effect and answer all damages and costs, if it fail to make its plea good, then the above obligation to be void, else to remain in full force and effect.

(Signed) T. SIMON, by
BAKER, BOTTS, ANDREWS & WHARTON,
By JOHN P. BULLINGTON,
Principal.
THE AETNA CASUALTY & SURETY COMPANY,
Surety,
By CARL F. WEISS,
Attorney in Fact. (Seal)

Approved October 29th, 1935.
(Signed) RUFUS E. FOSTER, Judge.

PRAECIPE.

Filed October 31, 1935.

(Title Omitted.)

To the Honorable H. J. Carter, Clerk of the United States District Court for the Eastern District of Louisiana:

You will please include in the record upon appeal in the above entitled cause the following documents and procedures:

1. Plaintiff's original bill of complaint.

2. Defendant's motion to dismiss and answer.

3. Order of Court consolidating causes for trial and providing for evidence in cause No. 324 in Equity, Baton Rouge Rice Mill, Inc., vs. Rufus W. Fontenot, etc., to be considered as evidence in this cause.

4. Affidavit of W. M. Reid.

5. Affidavit of Homer L. Bruce.

6. Joint affidavit of L. J. Bartel, R. F. Gould and J. J. Mayer.

7. Decree of the District Court.

8. Plaintiff's motion for injunction pending appeal and order denying same.

9. Motion and order for appeal.

10. Plaintiff's assignment of error.

11. Appeal bond.

12. This Praecipe.

13. Clerk's certificate.

HOMER L. BRUCE,
JOHN P. BULLINGTON,
BAKER, BOTTS, ANDREWS & WHARTON,
By JOHN P. BULLINGTON,
Attorneys for Plaintiff and Appellant.

Approved:
(Sgd.) ROBERT WEINSTEIN,
Asst. U. S. Attorney, Counsel for defendant.

Clerk's Office:

I, HENRY J. CARTER, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 50 pages contain and form a full, true and complete transcript of the record, assignment of errors, and all proceedings in the cause entitled "T. Simon vs. Rufus W. Fontenot, Individually and as Collector of Internal Revenue for the District of Louisiana," No. 325 In Equity of the Docket of this Court, as made up in accordance with the praecipe for transcript copied herein.

Witness my Hand and the seal of the said Court at the City of New Orleans, Louisiana, this 2nd day of November, A. D. 1935.

H. J. CARTER, Clerk,

By H. W. NIEHUES,
Deputy Clerk.

[fol. 86] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AT NEW ORLEANS, LOUISIANA

No. 7948

T. SIMON, Appellant,

v.

RUFUS W. FONTENOT, Individually and as Acting United State Collector of Internal Revenue for the District of Louisiana, Appellee

MOTION FOR PRELIMINARY INJUNCTION PENDING APPEAL—Filed November 4, 1935

Comes now T. Simon, appellant in the above numbered and entitled cause, and after due notice given to the appellee above named, respectfully states to the Court that the said appellant on the 25th day of October, 1935, brought a bill in equity in the United States District Court for the Eastern District of Louisiana, New Orleans Division, entitled T. Simon, plaintiff, v. Rufus W. Fontenot, individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, defendant, and numbered 325 in equity, in the New Orleans Division of said United States District Court. In its bill of complaint in said cause appellant prayed for a temporary restraining order to be [fol. 87] issued immediately, and for a preliminary injunction after notice to the appellee, and for a permanent injunction on the final hearing of said cause, enjoining the appellee from assessing or collecting or attempting to assess or collect from the appellant in any manner whatsoever, whether by lien or jeopardy or distraint proceedings, in court or otherwise, any processing taxes levied under and pursuant to the Act of the Congress of the United States known as the Agricultural Adjustment Act and amendments thereto, or purported to be levied by said Act, upon the appellant for the processing of rice during the month of September, 1935, and for subsequent months, and any interest or penalty on account of appellant's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the prop-

erty, real or personal, of appellant. That said application for a preliminary injunction was set down for hearing before the Judge of said District Court at New Orleans on Monday, October 28, 1935. The notice thereof was duly waived by the appellee. Prior to said hearing the said appellee filed his motion to dismiss and answer to said bill of complaint, copies of which motion and also of appellant's bill of complaint are contained in the record in this cause filed in this Court.

After a hearing had on appellant's motion for a preliminary injunction and on the said motion to dismiss, the Honorable John McDuffie, acting judge of said District Court on October 28, 1935, refused appellant's motion for a preliminary injunction, granted the motion of the appellee to dismiss the said bill of complaint and dismissed the said bill of complaint to which appellant herein duly excepted. [fol. 88] Thereafter, on the 29th day of October, 1935, the appellant herein in open court and in the presence of counsel for appellee filed its petition for an appeal, which was duly allowed by the said judge of the said United States District Court who tried said cause, and filed at the same time its assignments of errors, and also a cost bond was duly filed and approved by the said judge of said District Court. At the time appellant presented its said petition for appeal, it also petitioned said judge of the District Court to grant it an injunction enjoining the appellee in the manner set out in its request for a preliminary injunction in its bill of complaint, pending the appeal of appellant to this Honorable Court, but the said judge of said District Court on October 29, 1935, refused appellant's said petition and refused to grant appellant said injunction pending said appeal.

Appellant has therefore perfected its appeal to the Circuit Court of Appeals for the Fifth Circuit, making said cause returnable at New Orleans, Louisiana, as provided by law. Appellant has duly caused to be prepared a transcript of the record in said cause and has filed the same, in accordance with law, and within the time allowed by law, in the Clerk's office in the Circuit Court of Appeals at New Orleans, Louisiana.

In said bill of complaint appellant alleged that the amount of processing taxes on account of the rice processed by the appellant during the month of September, 1935, was $33,531.86, and that under said Agricultural Ad-

justment Act appellant was required to pay said amount to appellee on or before October 30, 1935, and that appellee was charged with the duty of collecting said tax, and if [fol. 89] said tax were not paid on or before October 30, 1935, appellee would assess said tax against the appellant and serve upon appellant notice and demand for the payment thereof and would allow appellant ten days from receipt from such notice within which to pay the same; that in the event said tax should not be paid within said time, appellee would assess against appellant a penalty equal to 5% of the amount of the tax and interest on the tax at the rate of 1% per month from the due date of the tax until paid; that if the appellant failed to pay the tax within said ten days, appellee would proceed to collect the tax, penalty and interest by filing a notice of lien on all of appellant's property and by distraining upon and selling such of appellant's property as might be necessary to realize the amount of said tax, penalties and interest; and that additional processing taxes for months subsequent to September, 1935, will accrue and be assessed against and collected from the appellant in the same manner as the tax for the month of September.

Appellant alleged that the said processing tax was illegal and unconstitutional, and violated various provisions of the Constitution of the United States in many particulars, more fully set forth in appellant's bill of complaint. The appellant also alleged that under an amendment to said Agricultural Adjustment Act approved on August 24, 1935, a Section 21 (d) was added to said Act, which section provides in substance that appellant should be allowed no recovery of any of said taxes paid, if the same should be illegal or unauthorized, unless appellant established to the satisfaction of the Commissioner of Internal Revenue, and [fol. 90] the Commissioner should so find, that neither appellant nor any person directly or indirectly under appellant's control or having control over appellant, has, directly or indirectly, included such amount in the price of the rice with respect to which it was imposed or of any article processed from the rice with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing

rice, and that the price paid by the appellant or such person for said rice was not reduced by any part of such amount. Appellant in said bill of complaint, alleged, as more fully set out in said bill of complaint, that under said Section 21 (d) it had no adequate remedy at law by which it could recover any part of said taxes if same were unconstitutional and illegal, and that it was impossible, owing to the peculiar conditions existing in the rice milling industry and in the purchase, milling and sale of rice, for appellant to discharge the burden placed upon it by said Section 21 (d), all as more fully set out in appellant's bill of complaint.

Appellant further alleged that in said amendment of August 24, 1935, a new section known as Section 21 (a) was added to said Agricultural Adjustment Act, which in substance provided that no suit to enjoin the collection of said processing taxes should be maintained in any court. Appellant further alleged that said section was not intended to apply, and did not apply, to the injunction prayed for by appellant, inasmuch as appellant had no adequate remedy at law. Appellant further alleged that if said section should be interpreted as prohibiting the injunction [fol. 91] prayed for by appellant, then the said section, together with the other provisions of said Act, was invalid and in violation of the Fifth Amendment to the Constitution, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes would be collected from appellant and appellant would have no remedy by which he could recover taxes and would have no remedy to prevent the collection of said unlawful taxes and would be forever deprived of the right to test the constitutionality of said taxes.

Appellant further alleged that said Section 21 (d) denied the appellant a complete and adequate remedy at law for the various other reasons set forth in said bill of complaint.

At the hearing before the District Judge appellant introduced in evidence the affidavit of W. M. Reid, Executive Secretary of The Rice Millers Association, a man of twenty-six years experience in the rice business, in which affidavit he set out fully and in detail the methods of conducting the rice business and the manner in which the rough rice market and the clean rice market is made, showing that it would

be utterly impossible for any rice miller to accurately determine whether he had made a profit or a loss on any given transaction, much less prove whether he had passed the tax, or any part thereof, on. Appellant also introduced in evidence the affidavit of Homer L. Bruce, a practicing attorney at the bar at Houston, Texas, setting out in detail the proceedings under a complaint brought by the Secretary of Agriculture to revoke the license of a rice mill under the Act in effect prior to the present Act. The Secretary of Agriculture sought to revoke the license of this mill for [fol. 92] failure to sell clean rice and rice products processed from rough rice at a price approximately 79c higher than the price paid for the rough rice. The affidavit showed that although the Government was able to prove the cost of the rough rice and to trace the particular rough rice into various "mixes" of clean rice and the price procured for these "mixes" of clean rice it was never able to prove that the price procured for the clean rice processed from the particular lot of rough rice was not 79c more than the price paid for the rough rice because of the fact that clean rice is customarily sold in "mixes" of various lots of rice and there was no way to allocate the price procured for the mixed rice sold to the various lots of rough rice which went into the mix.

In the meantime, appellant alleges that for the foregoing reasons and those set forth in its said bill of complaint in said cause, and because the judge of said court in his said order dismissed said bill of complaint and refused to grant appellant the injunction prayed for pending the appeal in this case, the appellee herein will, to the irreparable damage and loss of the appellant herein, proceed to collect the said taxes for September, 1935, which are now due and unpaid, from appellant, and said taxes for subsequent months, unless restrained by a preliminary injunction granted by this court. The appellant alleges that not only has it no complete remedy at law, but in fact no remedy at law at all, for the reasons hereinabove set forth and set forth more in detail in said bill of complaint, that it is faced with the alternative of paying the tax with the certainty that no remedy at law exists for its recovery in case it be held that it was unconsitutionally assessed, or of refusing [fol. 93] to pay and running the risk of becoming liable for the heavy civil and criminal penalties provided in the Act, and that the said judge of said District Court should

not have dismissed said bill of complaint, but should have overruled the same, and upon the hearing should have granted the preliminary injunction as prayed for in said bill of complaint.

Appellant would further show that there is now pending in the Supreme Court of the United States a case involving the constitutionality of the said Agricultural Adjustment Act, being the same case in which the Circuit Court of Appeals for the First Circuit declared the Act to be unconstitutional, and that the Supreme Court, according to press dispatches, has set said cause for oral argument on Monday, December 9, 1935; that a decision by the Supreme Court of the United States upon the validity of the said Act may be expected within a reasonable time thereafter; that the first benefit payment to farmers provided for in said Act has been made, and that under the standard form of contract between the Secretary of Agriculture and rice farmers no further payment is due until such time after December 1; 1935, as the Secretary shall determine and declare what further amount of benefit payments shall be made and when they shall be made; that the taxes to be collected under said Act are for the purpose of making these benefit payments and that since the Secretary of Agriculture need make no further benefit payments until such time after December 1, 1935, as may be fixed by him, the delay of the Government in collecting these taxes which might be occasioned by the granting of the injunction [fol. 94] prayed for herein will not occasion any injury to the Government nor will it unduly interfere with the achievement of the program set out in said Act if the Act be held constitutional. On the other hand, as hereinabove alleged, great and irreparable damage will be done to plaintiff in the event the law is held unconstitutional unless the injunction hereinafter prayed for is granted.

Appellant further shows that unless an injunction pending appeal be granted so as to preserve the status quo, the subject-matter of the suit will be lost and the jurisdiction of this Honorable Court defeated. Such injunction is necessary to preserve the jurisdiction of this Honorable Court, and in order that appellant may enjoy the just fruits of a favorable decision on this appeal.

The appellant states that it is ready and willing to give any reasonable bond or other security that may be required by any order of this Court, including the deposit from

month to month of the amount of tax due, in a depository to be designated by the court, and therefore prays that this Court make an order granting appellant a preliminary injunction enjoining and restraining the appellee from assessing or collecting or attempting to assess or collect from appellant in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in court or otherwise, the said processing taxes for the month of September and subsequent months and any other processing taxes under and pursuant to said Agricultural Adjustment Act upon rice processed by appellant, and any interest or penalty on account of appellant's failure to pay said processing taxes, and from imposing or giving notice of intention to impose [fol. 95] any lien for said taxes upon the property, real or personal, of the appellant, pending the hearing of appellant's appeal in this case and upon such conditions and terms as to this Court may seem just.

Homer L. Bruce. John P. Bullington. Baker, Botts, Andrews & Wharton, of Counsel.

[fol. 96] *Duly sworn to by John P. Bullington. Jurat omitted in printing.*

[fol. 97] In United States Circuit Court of Appeals

No. 7948

T. Simon

versus

Rufus W. Fontenot, Acting Collector of Internal Revenue

Order Denying Motion for Preliminary Injunction Pending Appeal—November 5, 1935

Upon the authority of Rickert Rice Milling Company, Inc., vs. Rufus W. Fontenot, etc., the application for injunction in the above numbered and entitled case in denied.

[fol. 98] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7937

RICKERT RICE MILLING COMPANY, INC., Appellant,

versus

RUFUS W. FONTENOT, Acting Collector of Internal Revenue, Appellee

Appeal from the District Court of the United States for the Eastern District of Louisiana

MOTION FOR PRELIMINARY INJUNCTION PENDING APPEAL

Before Foster and Sibley, Circuit Judges, and Strum, District Judge

OPINION—November 5, 1935

By the COURT:

On consideration of the application for an injunction to stay collection of taxes levied under the provisions of the Agricultural Adjustment Act, as amended by the Act of August 24, 1935, the Court is of the opinion that the taxpayer has a remedy at law to recover back any taxes il-[fol. 99] legally exacted and, further, that the provisions of the Act as amended deprive the Court of jurisdiction to grant injunctive relief.

It is ordered that the application be denied.

[fol. 100] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 101] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 25, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted, and the case is assigned for argument on Monday, December 16, next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 40,135. U. S. Court Circuit of Appeals, Fifth Circuit. Term No. 581. T. Simon, Petitioner, vs. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana. Petition for a writ of certiorari and exhibit thereto. Filed November 11, 1935. Term No. 581, O. T. 1935.

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 585

LEVY RICE MILLING CO., INC., PETITIONER,

vs.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 14, 1935.

CERTIORARI GRANTED NOVEMBER 25, 1935.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 585

LEVY RICE MILLING CO., INC., PETITIONER,

vs.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DEC. 3, 1935.

—7185-C

UNITED STATES OF AMERICA.

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

No. 326 (In Equity).

LEVY RICE MILLING COMPANY, INC.,

versus

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA.

Appearances:

Messrs. Merrick, Schwarz, Guste, Barnett & Redmann, Attorneys for Levy Rice Milling Co., Inc., Plaintiff-Appellant.

Rene A. Viosca, Esq., United States Attorney, and Robert Weinstein, Assistant United States Attorney, appearing on behalf of Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue for the District of Louisiana, Defendant-Appellee.

APPEAL from the District Court of the United States for the Eastern District of Louisiana to the United States Circuit Court of Appeals for the Fifth Circuit, returnable within thirty (30) days from the 29th day of October, 1935, at the City of New Orleans, Louisiana.

TRANSCRIPT OF RECORD.

BILL OF COMPLAINT.

Filed Oct. 28, 1935.

United States District Court for the Eastern District of Louisiana.

Number 326 In Equity.

Levy Rice Milling Company, Inc.,
vs.
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Petition.

Filed ....,Deputy Clerk.

To the Honorable Wayne G. Borah, Judge of the District Court of the United States in and for the Eastern District of Louisiana, New Orleans Division:

The petition of Levy Rice Milling Company, Inc., with respect, represents:

I.

That petitioner is a corporation created and existing under the laws of the State of Louisiana, with its domicile in the City of New Orleans within the Eastern District of Louisiana.

II.

That Rufus W. Fontenot, hereinafter called "Respondent," is a citizen of the State of Louisiana and residing in the City of New Orleans, within the Eastern District of Louisiana, and is the Acting United States

Collector of Internal Revenue for the State of Louisiana.

III.

This is a suit in which the matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand ($3,000.00) Dollars and arises under the Constitution and laws of the United States, and in which the plaintiff seeks to enjoin the Acting Collector of Internal Revenue from unlawfully collecting processing taxes, in accordance with the provisions of certain Acts of Congress, which are violative of the Constitution of the United States.

IV.

Plaintiff is, and at all the times hereinafter mentioned was, engaged in the business of milling rice in its own rice mill, located in the City of New Orleans, State of Louisiana.

V.

The Agricultural Adjustment Act, Chapter 25, Title 1, 48 Stats. 31, as amended, and more particularly Sections 9 and 16 thereof, and the Regulations and proclamations of the Secretary of Agriculture of the United States and orders of the Secretary of the Treasury of the United States made and issued pursuant to the provisions of the said Act of Congress, purport to impose, levy and assess against plaintiff so-called "processing taxes" in the aggregate amount of $17,721.23 on account of rice milled by the plaintiff during the month of September, 1935.

VI.

Under the provisions of the said Act of Congress, as amended, and the Regulations of the Secretary of Agri-

culture and the Secretary of the Treasury, made and issued pursuant thereto, petitioner must file with the respondent Acting Collector of Internal Revenue, on or before the last day of October, 1935, a return showing the amount of rice processed during the month of September, 1935, by petitioner and the amount of tax due thereon, and accompany the same with remittance of the amount of processing taxes on account of rice processed by the petitioner during the month covered by the return. It is the duty of the respondent, as Acting Collector of Internal Revenue, to collect the taxes imposed, as hereinabove set forth, together with interest thereon at the rate of one (1%) percent per month for failure to pay the tax when due. Should plaintiff fail to make remittance of the tax at the time specified for filing the return, the respondent, as Acting Collector of Internal Revenue, is bound under the statute and the Regulations to assess the same, notify petitioner of said assessment, and, upon petitioner's failure to pay the said tax and interest within ten (10) days from receipt of said notice, an additional penalty of five (5%) percent is imposed by the statute and Regulations. Should petitioner fail to pay the taxes and interest within ten (10) days of receipt of said notice, the respondent, as Acting Collector of Internal Revenue, will enforce collection of the said taxes, interest and penalties by filing notice of lien against all of petitioner's properties and by distraining upon and selling plaintiff's property to the extent necessary to enable the respondent to realize in full the amount of the said taxes, interest and penalties. The petitioner is actively engaged in the operation of its said rice mill and taxes under the said Act of Congress will continue to accrue on the last day of each month, and, upon plaintiff's failure to pay the said taxes, repeated distraints will be issued against petitioner's property to petitioner's irreparable damage and loss. For the reasons hereinafter stated, petitioner has no adequate remedy at law in the premises.

VII.

Petitioner shows that its said business of milling rice is conducted wholly and entirely within the State of Louisiana, wherein its said rice mill is located, and that said milling is wholly and entirely an intrastate business.

VIII.

Petitioner shows that the said Agricultural Adjustment Act, as amended, insofar as it provides for the levy, assessment and collection of processing taxes upon rice processed by this petitioner, is illegal and violative of the Constitution of the United States, more particularly as follows:

(a) The said exactions herein referred to as processing taxes are not authorized by Article I, Section 8, Clause 3 of the Constitution of the United States regulating interstate and foreign commerce, for the reason that the production and processing of rice, and more particularly the business of processing rice as conducted by this petitioner, are not interstate commerce, but, on the contrary, both the production and processing of rice is wholly an intrastate business.

(b) The said exactions called "processing taxes" by the statute are not imposed under Section 8 of Article I of the Constitution, but are imposed for the purpose of regulating and restricting the production of rice in the several states, which is an unwarranted interference with the powers reserved to the states under the Tenth Amendment and, therefore, does not constitute an exercise of the Federal taxing power.

(c) The said Act, and more particularly Sections 8 and 9 thereof, is an unwarranted and unconstitutional delegation to the Secretary of Agriculture of the legis-

lative power granted exclusively to Congress by Article I, Section 1 of the Constitution of the United States, in that it delegates to the Secretary of Agriculture the power to determine by agreement with producers which of the commodities enumerated under Section 11 of the Act, as amended, shall be restricted as to production, to what extent the acreage devoted to production of any of such commodities shall be limited to bring about the result sought to be gained by the Act, to determine when rental or benefit payments shall be made and the amount, when and what competing commodity should be taxed and to what extent, when such processing tax shall become effective or shall cease to be imposed; all of which are the exercise of legislative powers conferred exclusively on Congress by Article I, Section 1, Article I, Section 8, clause 18, Article II, Section 1, Article I, Section 7, clause 1, and Article I, Section 9, clause 7 of the Constitution of the United States.

(d) The collection of the said exactions, said so-called processing taxes, as to the petitioner herein, would constitute the taking of petitioner's property without due process of law and not for a public purpose but for the benefit of a specific class of individuals, without just compensation to petitioner, and in that respect is violative of the Fifth Amendment to the Constitution of the United States, since the said exactions are imposed on the face of the statute for the benefit of the producers of rice.

(e) The said exactions imposed by the statute under the name of "processing taxes," if at all taxes within the intendment of the Constitution, are direct taxes and are not apportioned as required under Section 8 of Article I of the Constitution, or, if excise taxes, are not uniform throughout the United States and, therefore, violative of Article I, Section 8, Clause 1 of the Constitution of the United States.

IX.

Section 21 (d) of the said Agricultural Adjustment Act (as amended, which amendment was approved August 24, 1935) provides that no recovery shall be made or allowed of any tax, penalty or interest collected under the Agricultural Adjustment Act, unless it shall be established to the satisfaction of the Commissioner of Internal Revenue that neither the claimant nor any person directly or indirectly under his control, or having control over him, has directly or indirectly included such amount in the price of the article in respect to which it was imposed, or any article processed from the commodity in respect to which it was imposed, or passed on any part of such amount to the vendee, or to any other person in any manner, or included any part of such amount in the charge or fees for processing, and that the price paid by the claimant to such person was not reduced by any part of such amount.

Petitioner avers that said provision of the Act imposes an undue and impossible burden of proof as a condition precedent to recovery of any processing tax paid, and, therefore, the apparent remedy afforded by the Statute is wholly inadequate, and is, in fact, no remedy at all.

Petitioner shows that it is impossible for petitioner, or any other rice miller, to produce the evidence required by this provision of the Act for the following reasons:

(a) Rough rice and clean rice, and the by-products of rice milling, namely, polish, bran and hulls, are bought and sold on a competitive basis;

(b) While the price of rough rice is affected by the market price of clean rice at any given time, the

price of both fluctuates, and since several months elapse between the purchase by the miller of rough rice, and the sale by the miller of the same rice after being milled, and its by-products, it is impossible for the miller to know at the time he purchases rough rice whether he will make a profit, or sustain a loss on the rice purchased.

(c) Furthermore, rice is sold in competition with other food commodities, and as a consequence, its market value is affected by the market value, from time to time, of other food commodities sold in competition with rice.

(d) From the nature of the commodity and of the process of milling, rough rice when milled produces different grades and qualities of clean rice, of varying market value, and also produces different kinds of by-products of varying values;

(e) The overhead and milling expense of rice mills vary, depending upon location, management and other factors, which results in differences of gains made or losses sustained by the respective mills;

(f) The processing tax accrues and is payable on the rice processed during any given month, at the end of the succeeding calendar month; but the said rice, of varying grades and values, and its by-products of different classes and values, are sold from time to time at different prices, depending upon the market from time to time, and the same grade from rice processed during different months and purchased at different prices may and frequently is sold in one lot at the same price.

(g) Because of the foregoing and of other factors inherent in the nature of the business, while taxation is bound to be a factor affecting the competitive and

fluctuating market value of rough rice and of clean rice and its by-products and, therefore, can be said to some extent to have been taken into consideration in the purchase of rough rice and in the sale of clean rice and its by-products, it is absolutely impossible to say as to any given lot of rice processed in any given month, whether any or a part, or if a part, what part, of the so-called processing taxes has been either passed back to the producer or passed on to the purchaser of the clean rice and its by-products.

Said Section 21 (d) of the Act, therefore, provides a condition precedent to recovery of the tax paid, even though same should be finally declared to have been illegally collected, which condition precedent is absolutely impossible of performance.

X.

Section 21 (d) of the said Act further requires that this well-nigh impossible condition precedent to recovery of taxes paid by petitioner must be established to the satisfaction of the Commission of Internal Revenue, thus making the Commissioner of Internal Revenue the trier of the facts involved and allowing recourse to the Courts upon denial of relief by the Commissioner, only upon the record made up before the Commissioner. Therefore, on such recourse to the Courts, in order to allow a recovery, the Court would have to find that there was no evidence whatever in the record to sustain the Commissioner's finding. For this reason, said Section 21 (d) deprives petitioner of its property without due process of law and is, therefore, violative of the Fifth Amendment to the Constitution of the United States.

XI.

Section 21 (a) of the said Act (amendment of August 24, 1935) provides that no suit shall be brought

or maintained in any Court, if such suit is for the purpose of obtaining a Declaratory Judgment under the Federal Declaratory Judgments Act, in connection with any such tax or such amount of any such interest or penalty.

Petitioner, therefore, for the reasons above stated, cannot obtain any refund under the provisions of Section 21 (d) and cannot obtain any Declaratory Judgment by reason of the provisions of Section 21 (a) and is, therefore, completely and wholly without any adequate legal remedy in the premises.

XII.

Said Section 21 (a) further prohibits suits to enjoin the collection of any taxes imposed by said Act. Petitioner shows that the extraordinary and exceptional circumstances hereinabove set forth renders the said provisions of the Act inapplicable to the situation here presented.

XIII.

A further ground for the equity jurisdiction of this Court and of the inadequacy of the legal remedy provided by Section 21 (d) of the Act is that your petitioner would be relegated to seeking its remedy by a multiplicity of claims and suits for refund of the taxes paid.

XIV.

Should the injunctive relief hereinafter prayed for be granted, petitioner will continue to make and file with the respondent, as Acting Collector of Internal Revenue, the monthly returns of the tax and will deposit the amount of such taxes, at the times that said

taxes are made payable by the statute and the Regulations thereunder, with such Depositary as the Court may direct, the amounts thus deposited to remain so deposited subject to the further orders of this Court.

Wherefore, your petitioner prays for equitable relief, as follows:

1. That a Writ of Subpoena may be issued out of and under the seal of this Honorable Court, directed to the said respondent, Rufus W. Fontenot, individually, and as Acting Collector of Internal Revenue for the District of Louisiana, requiring him to appear on a day certain before this Court, and then and there full, true, direct and perfect answer make to all and singular the allegations contained in the foregoing petition, but not under oath (answer under oath being hereby expressly waived), and to perform and abide by such further orders, directions and decrees herein as this Honorable Court shall deem meet and proper.

2. That this Court will issue a temporary restraining order herein, enjoining and restraining the respondent from assessing or collecting, or attempting to assess or collect from petitioner herein, in any manner whatsoever, any processing taxes, and any interest or penalty, imposed by the said Agricultural Adjustment Act, and at the convenience of the Court, and in accordance with law, will fix a time for hearing on this application for a Preliminary Injunction, and that notice of said hearing shall be served upon said respondent; and upon said hearing a Preliminary Injunction be issued, enjoining and restraining the respondent from assessing or collecting from petitioner any processing taxes, interest or penalties imposed by said Agricultural Adjustment Act.

3. That after all due proceedings had, said Preliminary Injunction be made permanent, and the said

Agricultural Adjustment Act, insofar as it provides for the levying, assessment and collection of said processing taxes against and from petitioner be decreed illegal, invalid and unconstitutional.

Petitioner further prays that upon the granting of said Preliminary Injunction, the Court authorize and direct petitioner to deposit, from month to month, the amount of said taxes, as they accrue and are payable, with such Depositary as the Court may select, and subject to the further orders of this Court.

Petitioner prays for such further orders, decrees and relief as equity, law and the nature of the cause may require.

LEVY RICE MILLING COMPANY, INC.,
By JAKE LEVY, President,
RALPH J. SCHWARZ,
MORRIS B. REDMANN,
Solicitors.

State of Louisiana,
Parish of Orleans. ss.

Before me, the undersigned authority, a Notary Public duly commissioned and qualified in and for the above Parish and State, personally came and appeared Jake Levy, who being first duly sworn, deposes and says:

That he is the President of Levy Rice Milling Company, Inc., petitioner in the foregoing petition, and that all the allegations therein made are true and correct.

(Sgd.) JAKE LEVY.

Sworn to and subscribed before me, at New Orleans, Louisiana, this 28th day of October, 1935.

(Sgd.) MORRIS B. REDMANN,
Notary Public.

RETURN TO RULE TO SHOW CAUSE.

Filed Oct. 28, 1935.

In the District Court of the United States for the Eastern District of Louisiana, New Orleans Division.

No. 326 (In Equity).

Levy Rice Milling Company, Inc.;
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

To the Honorable, the Judge of the District Court of the United States in and for the Eastern District of Louisiana:

Now into Court comes Rufus W. Fontenot, Acting Collector of Internal Revenue, defendant in the above entitled and numbered cause, through Rene A. Viosca, United States Attorney in and for the Eastern District of Louisiana, and Robert Weinstein, Assistant United States Attorney for said District, his attorneys, and by virtue of the rules and practice of this Court requiring the defendant in rule to file all defenses to the rule on the date set for the hearing on the application for a temporary injunction, and with full reservation of all of his rights under the pleadings in this cause, answers the rule by stating that for lack of sufficient information to justify a belief he denies all of the allegations of paragraph one, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen of the bill of complaint, but admits the allegations of paragraph two of the said bill.

Your respondent further avers that the proceedings should be dismissed for the reasons that this Honorable Court has no jurisdiction and that the Agricultu-

ral Adjustment Act is constitutional, valid and enforceable.

Wherefore, your respondent prays this Honorable Court to dismiss the Bill of Complaint at complainant's costs and to refuse granting any injunction in these proceedings, and for all general and equitable relief.

(Signed) RENE A. VIOSCA,
United States Attorney,
(Signed) ROBERT WEINSTEIN,
Asst. United States Attorney.

VERIFICATION.

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, personally came Rene A. Viosca, who is the United States Attorney for the Eastern District of Louisiana, who in his oath says: That in his aforesaid official capacity he is of counsel for defendant in the above case; that he has drawn the return to the rule to show cause and that all the allegations of fact therein are true and correct to the best of his knowledge, information and belief.

(Signed) RENE A. VIOSCA.

Sworn to and subscribed before me this 28th day of October, 1935.

(Signed) CLAUDE D. SHAW,
Deputy Clerk, U. S. District Court, Eastern District of Louisiana.

MOTION TO DISMISS.

Filed October 28, 1935.

In the District Court of the United States for the Eastern District of Louisiana, New Orleans Division.

No. 326 (In Equity).

Levy Rice Milling Company, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

To the Honorable, the Judge of the District Court of the United States in and for the Eastern District of Louisiana:

Comes now, Rufus W. Fontenot, Acting Collector of Internal Revenue, defendant in the above entitled and numbered cause, by Rene A. Viosca, United States Attorney in and for the Eastern District of Louisiana, and Robert Weinstein, Assistant United States Attorney for said District, his attorneys, with full reservation of his rights to further plead in this cause, and moves the Court to dismiss the Bill of Complaint filed herein, with costs to be paid by the complainant upon the following grounds and for the following reasons:

I.

That this Court is without jurisdiction to restrain or enjoin the collection of taxes herein involved, or to hear and/or determine the issues presented by said Bill of Complaint because:

1. Section 3224 of the Revised Statutes of the United States prohibits the maintaining in any Court

of a suit for the purpose of restraining the assessment and/or collection of a Federal Tax.

2. Section 21-A of the Agricultural Adjustment Act, as amended, prohibits the maintaining in any Court of a suit for the purpose of restraining the assessment and/or collection of any processing tax under the said Agricultural Adjustment Act.

3. The bill of complaint sets forth no facts which, if true, would entitle complainant to the relief prayed for in a Court of Equity.

4. Complainant has a plain, adequate and complete remedy in the ordinary course of law.

(Signed) RENE A. VIOSCA,
United States Attorney,
(Signed) ROBERT WEINSTEIN,
Asst. United States Attorney.

ORDER OF COURT CONSOLIDATING ALL CASES FOR TRIAL, ETC.

Filed Oct. 28, 1935.

United States District Court, Eastern District of Louisiana, New Orleans Division.

Docket No. 321—In Equity:

Rickert Rice Mills, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 322—In Equity:

A. B. Dore, doing business under the name of The Dore Rice Mill,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 323—In Equity:

United Rice Milling Products Co., Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 324—In Equity:

Baton Rouge Rice Mill, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 325—In Equity:

T. Simon
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 326—In Equity:

Levy Rice Milling Company, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 327—In Equity:

Farmers Rice Milling Company, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 328—In Equity:

Noble-Trotter Rice Milling Co., Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Considering the stipulation and agreement of counsel for all parties made this day in open Court;

It is Ordered that the above numbered and entitled cases be and they are hereby consolidated for the purpose of trial and that the affidavits and evidence offered in one case be considered to apply to all.

(Signed) JOHN McDUFFIE, Judge.

New Orleans, Louisiana, October 28, 1935.

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, on this day personally appeared W. M. Reid, known to me, who being by me first duly sworn in terms of law deposed and said on his oath as follows:

My name is W. M. Reid. I reside in New Orleans, Louisiana, and am Executive Secretary of the Rice Millers' Association. My principal duties are the

preparation and interpretation of statistical and economic data with regard to the rice milling industry. I have been engaged in the rice milling business since 1909, and from 1916 to 1928, I personally operated a rice mill. I am thoroughly familiar with the rice milling industry in all of its phases.

I have read all of the allegations contained in Section 12 of Plaintiff's bill of complaint and Equity 321, Rickert Rice Milling Company vs. Rufus W. Fontenot, Equity 322, A. B. Dore vs. Rufus W. Fontenot, Equity 323, United Rice Milling Products Company, Inc., vs. Rufus W. Fontenot and companion cases, and all of such allegations are true and correct in every respect.

It is true that rice millers, when they purchase rough rice, consider the fact that they will have to pay a processing tax on the milling of such rough rice. However, this is simply one of the many factors entering into the miller's determination of what he ought to pay for rough rice. As a practical matter, when the rice miller negotiates for the purchase of a given lot of rice, he first estimates what he believes he could get for such rice after milling on the existing market for clean rice and rice products. He then estimates what he thinks it will cost him to process the rough rice into its various grades and products, and in this estimate is included the amount of the processing tax, as well as other taxes. Having made these estimates, he determines what he ought to pay for the rough rice. However this is not necessarily what he does pay, because each individual miller is buying in competition with other millers. Thus, if other millers are paying more than he thinks he ought to pay, he has to meet the price the others are paying, if he is to get any rice. No individual miller makes the rough rice market. It is a market made of the composite purchasing of all millers in the particular territory. While the estimates above referred to are made with regard to the market for clean

rice and rice products at the time of the purchase of the rough rice, that market, however, does not necessarily control since rough rice is not ordinarily milled, and the clean rice and products sold until several months after the purchase of the rough rice.

Since the market for clean rice and rice products fluctuates from day to day and month to month, the prospects of the future market has a bearing on what the miller may have to pay for rough rice. Optimism with reference to the future market for clean rice on the part of a sufficient number of rice millers will force up the market for rough rice, and all millers will have to meet the increased price of rough rice (if they are to have any rice at all), even though some of them may be pessimistic as to the future market.

For example, the present market price of rough rice is quite high with reference to the present market price for clean rice and rice products. In other words, using the estimates above referred to, the cost of rough rice on today's market plus estimated cost of milling (including the processing tax) is more than the miller could reasonably expect to procure for the rice and rice products made from such rough rice on the existing market for clean rice and rice products. This present day market for rough rice is not made by any individual miller, but is made by the composite of purchases by all millers in the territory. Thus, as I have previously said, while the processing tax is considered by the miller in determining what he ought to pay for rough rice, it is simply one of many factors entering into such determination, and is by no means controlling.

Furthermore, it is impossible to tell on any given purchase of rough rice how much, if at all, that price has been affected by the existence of the processing tax.

I am familiar with accounting and statistical methods, and I know of no possible method of keeping books and records in the rice business which would

accurately reflect the gain or loss from the purchase, milling and sale of any given lot of rice as distinguished from the gain or loss from the aggregate of all transactions during a season. A profit or loss, however, may be estimated at any given time by the use of averages, predictions and arbitraries.

The rice milling business is seasonal; the season beginning on August 1st and ending on July 31st, the operations gradually increasing until the peak is reached during the months of October, November and December, and decreasing to the end of the season. For this reason as well as others, the cost of milling varies greatly from time to time during the season. The estimated cost of milling which millers use in budgeting and determining what they want to pay for rough rice is arrived at by averaging the cost of the entire season so that this factor, when used to estimate a profit or loss on a given transaction, could never be exact, and might be very much too high or very much too low when applied to that particular transaction.

Under these circumstances, when a miller purchases a particular lot of rice, he may believe that all, or a part of the processing tax to be assessed on such rice will be absorbed by the farmer. On the other hand, he may believe that all, or a part of such tax will be absorbed by himself. However, he can never even know, much less prove, even after all the clean rice and rice products made from the particular lot of rough rice has been sold, whether he, or the farmer, or the purchaser, or all of them together has borne the ultimate economic burden of the tax. This is because any belief he may have had as to whether the burden of the tax would fall, must of necessity, have been based in part on estimates, which are in turn, based on averages, which are never accurate with respect to any given lot of rice. In addition, such belief must also be based in part on assumptions as to market conditions on clean rice and rice products, which may

or may not be correct. The rough rice may go through the mill on a day when large amounts are being milled, and the cost per unit is lower than the average; or, it might go through on a day when little rice was being milled resulting in a unit cost higher than the average; or, it might go through partly on one kind of a day, and partly on another. Furthermore, the rice may not mill out what he expected, even if the market on clean rice and rice products remains the same. And, in addition, the price at which he eventually sells the clean rice and rice products may be substantially less or substantially more than the sale price on which he based his presumptions.

There is no necessary relation between the market for clean rice and for rice products, since they are sold for different purposes, and this is an added reason why the miller cannot possibly allocate the cost of a given lot of rough rice among the clean rice and rice products produced from it.

For example, it is entirely possible for the market on bran or hulls to be relatively high, while the market on the various grades of head rice is relatively low.

The rough rice market is affected by the clean rice and rice products market and vice versa, but it is as impossible to determine their relative affect on each other as it is to determine whether the hen or the egg came first. I know of no way of determining what either the rough rice or clean rice marked would be if there were no processing tax. I do know, however, that the individual miller cannot force down the price paid to the farmer for rough rice because of the tax, and thus force the farmer to pay all, or a part of the burden of the tax. The individual miller simply pays the market price for rough rice which has been fixed by the composite action of all millers, and it would be impossible to prove whether a lowering of the rough rice market was the result of the assessment of the tax, or whether it was caused by other factors, such as a drop in time clean rice and rice products

market, a composite pessimism on the part of rice millers as to the future market or other factors. The same thing is true with regard to the market for clean rice and rice products, and no individual miller can arbitrarily force that market upwards in order to pass on the tax.

(Sgd.) W. M. REID.

Sworn and subscribed to before me, the undersigned authority, this 28 day of October, 1935.

(Sgd.) HARRY R. CABRAL,
(Seal) Notary Public.

State of Texas,
County of Harris.

Before me, the undersigned authority, on this day personally appeared Homer L. Bruce, who, having been by me duly sworn, stated on oath as follows:

He lives in Houston, Harris County, Texas, and is duly licensed and practicing attorney at law. He is familiar with the bills of complaint that are being presented to the United States District Court at New Orleans, Louisiana, on behalf of certain rice millers of Louisiana seeking an injunction against the collection of processing taxes on rice, having worked with his partner Mr. John P. Bullington in the preparation of said bills of complaint, and is familiar with the general practice of the rice industry of selling rice on samples and the filling of orders for clean rice by mixing rice from different lots of clean rice in the manner set out in the bills of complaint.

This affidavit is made in connection with the allegations in said bills that it is impossible for the plaintiff rice millers to comply with the requirements of Section 21 (d) of the Agricultural Adjustment Act that they

shall establish that no part of the processing tax has been passed on to the consumer or taken out of the price paid the producer before they are allowed to recover any processing taxes paid.

Section 8 (3) of the Agricultural Adjustment Act gave the Secretary of Agriculture authority to issue licenses to processors, including processors of rice, and provided that the Secretary should have the right to revoke any license for violations of its terms. Section 8 (2) of the same Act authorized the Secretary to enter into marketing agreements with processors.

In the fall of 1933, the Secretary entered into a marketing agreement with members of the southern rice milling industry, and at the same time issued a license applicable to all mills. This marketing agreement and the license were in substantially the same form. Later various amendments were made to both the marketing agreement and the license.

In the marketing agreement and in the license, the Secretary of Agriculture fixed the price to be paid to farmers for rough rice, these prices being set out in Article III of the marketing agreement and license hereinafter referred to, namely, the one effective on July 21, 1934. Article IV, Section 1 of the license effective July 21, 1934, set out the minimum price that millers might sell clean rice for in the domestic market and that section is as follows:

"Section 1. To effectuate the purposes of this Amended license and to aid in the carrying out and enforcement of the provisions hereof, no miller shall offer for sale, sell or deliver for domestic consumption any quantity of clean rice for an amount per pocket less than the sum of

(a) the minimum price, determined pursuant to article III and Schedule 1, for the grade, variety and quantity of the rough rice from which such clean rice was milled,

(b) the conversion charge for such quantity of rough rice and prevailing at the time of such offer, sale or delivery, and

(c) the published car lot rail rate for transporting such rough rice from the customary point of delivery to the miller's mill, and

(d) the administrative assessment for such quantity of rough rice and prevailing when such rice was milled;

Provided, however, that any miller may offer clean rice for sale for export to foreign countries, on the foregoing basis less a maximum discount of 20 cents per barrel of such rough rice and may, if the rice is actually exported, sell or deliver clean rice for export to foreign countries on said basis less said maximum discount. The determination of the Millers Committee as to whether or not clean rice is actually exported shall be final and conclusive, subject to appeal to the Secretary. Said minimum amounts, below which this section provides that clean rice shall not be offered for sale, sold, or delivered by a miller, apply f. o. b. the miller's mill.

Sec. 2. The conversion charge per barrel of rough rice shall, until and except as changed by the Secretary, be an amount equal to the sum of (a) seventy (70) cents per barrel of rough rice, (b) nine (9) cents per barrel of rough rice if standard one-hundred pound single packages are used for the clean rice, and (c) if cotton or paper inner linings or regular burlap outer slips are used for the clean rice, an additional five (5) cents per barrel of rough rice, or (d) if any other type of container is used for the clean rice, the actual invoice price for the container used. The Secretary may at any time and from time to time during the effective period, increase or decrease the amount of, and/or

change the basis of computation of, the conversion charge."

One of the main purposes, if not actually the main purpose, of the Agricultural Adjustment Act and this license was to increase the price of rough rice paid the farmer, and in order to keep the rough rice price at a higher level, the Secretary attempted by this Section 1 to fix the price that clean rice might be sold at as roughly 79¢ per barrel above the cost of the rough rice. It was extremely important to keep the clean rice up to this level in order to maintain the rough rice price. In the fall of 1934, the Secretary of Agriculture brought proceedings, according to the information and belief of the affiant, against a number of different rice mills in Louisiana and to affiant's knowledge against Bay City Rice Mills of Bay City, Texas, a partnership composed of W. M. Loving and three other partners. The case against the Bay City Mills was case No. 11-1-7, entitled In the Matter of W. M. Loving, R. Q. Pegram, S. M. Clements and L. D. Clements, Individually and as Co-partners trading under the name Bay City Rice Mills. One of the original charges against the Bay City Rice Mills was Charge No. 11, which charged in general terms that the Mill had sold clean rice for domestic consumption for an amount less than the price fixed for the sale of the clean rice pursuant to this license. This Charge 11 was later made more specific as follows:

"11. That the said Licensee since the effective date of said License has violated Section 1 of Article V of said License as in effect until July 21, 1934, 12:01 A. M. Eastern Standard Time, and Section 1 of Article IV of said License as in effect from July 21, 1934, 12:01 A. M. Eastern Standard Time on, in that said Licensee has offered for sale, sold and delivered, for domestic consumption, quantities of clean rice, to-wit: Clean

rice lot numbered 36 on the books of the respondent derived from rough rice lot numbered 33 on the books of the respondent and purchased from C. E. Everitt; clean rice lot numbered 43 on the books of the respondent derived from rough rice lot number 33 on the books of the respondent and purchased from C. E. Everitt; clean rice lot numbered 123 on the books of the respondent derived from rough rice lot numbered 153 on the books of the respondent and purchased from A. P. Powers clean rice lot numbered 124 on the books of the respondent derived from rough rice lot numbered 154 on the books of the respondent and purchased from J. R. Reed; for an amount per pocket less than the price fixed for the sale of such clean rice pursuant to said Section 1 of Article V of said License as in effect up until July 21, 1934, 12:01 A. M. Eastern Standard Time, and pursuant to said Section 1 of Article IV of said License as in effect from July 21, 1934, 12:01 A. M. Eastern Standard Time on."

The affiant, together with Mr. W. E. Davant of Bay City, Texas, represented the Bay City Rice Mills in this hearing before the representatives of the Secretary of Agriculture on these charges, which hearing was held in Houston, Texas, and again on December 27, 1934, and ran through January 2, 1935.

The Bay City Rice Mills in that proceeding took the position, and so advised the Secretary of Agriculture's representatives, that it was utterly impossible, owing to the manner in which the rice industry is conducted, through the sale of clean rice on samples made up of mixes of different lots of clean rice, as more fully set out in the bills of complaint presented to the United States District Court at New Orleans in the processing tax suits, to determine in the case of any lot of rice, whether the clean rice had been sold for 79¢ more than the rough rice had cost. or for the amount above the cost of the clean rice that the Secretary required under Section 1 of Article IV.

The Secretary of Agriculture's representatives had access to all the books, vouchers and records of the Bay City Rice Mills, both in connection with its rough rice purchases and its clean rice sales and had several auditors continuously working on those records. The amount paid for the rough rice purchased from Evoritt, Powers and Reed, as set forth in said Charge II was established. The clean rice derived from the rough rice purchased from these three producers was traced at the hearing into the sales of clean rice into which they entered and the price of clean rice sales was established. However, owing to the fact that each quantity of clean rice that went into a sale was made up of a mixture from various lots of clean rice, which were in turn produced from various lots of rough rice bought from different producers, and owing to the fact that there was, as is usual in the rice business, an almost infinite variation in the combinations of these mixes of clean rice lots, and owing to the fact that rough rice when milled produces different grades of clean rice, as set forth in the above mentioned bills of complaint, the Secretary of Agriculture was never able to show in that case whether or not the Bay City Rice Mills had obtained for the clean rice derived from the Evoritt, Powers, and Reed rough rice the amount (roughly 79c) above the cost of the rough rice that Article IV, Section 1, attempted to require the mill to get. Although that was one of the charges most vitally affecting the entire rice program in affiant's belief, and although the Secretary of Agriculture through his two attorneys who prosecuted the case and through his several auditors who were continuously working on the records of the Bay City Mills made every effort to prove the charge, the Secretary of Agriculture in his findings did not find that the charge had been proven and did not find that the Bay City Rice Mills had violated the license in the manner set forth in Charge 11.

Affiant believes, and on that belief states, that the reason the Secretary of Agriculture did not find that Charge 11 had been supported by any evidence was because it was utterly impossible practically to show whether clean rice had been sold for the amount above the rough rice cost that the license required.

The charge referred specifically to the sale of clean rice lots 36, 43, 123 and 124. Evidence as to the history of those clean rice lots is as set out below.

The clean rice in each case was included in various sales, each sale being represented by a separate invoice. The history of those clean rice lots was as follows: (As shown by the record in that case.)

Clean Rice Lot 36:

This rice came from rough rice lot 33 from C. E. Everitt. It was mixed with various other lots of rice and went in as a part of the rice sold and represented by the following 9 invoices: Invoice Nos. 6615, 6622, 6634, 6639, 6645, 6767, 6770, 6771 and T-162 (R. 324-326).

The rice covered by invoice No. 6615 was made up of rice from various lots as follows:

39 pockets from lot 17, fancy
125 pockets from lot 31, fancy
200 pockets from lot 36, fancy
26 pockets from lot 33, heads
26 pockets from lot 31, heads
(R. 472.)

Invoice 6622 consisted of the following:

75 pockets from lot 26, fancy
250 pockets from lot 35, fancy
175 pockets from lot 36, fancy
(R. 475.)

Invoice 6634 consisted of the following:

148 pockets from lot 34 EP
75 pockets from lot 35 EP
75 pockets from lot 36 EP
81 pockets from lot 37 EP
68 pockets from lot 38 EP
150 pockets from lot 43 EP
201 pockets from lot 45 EP
(R. 478.)

There was no evidence whatsoever as to the different lots going to make up the rice on any of the other invoices heretofore or hereafter referred to, but each invoice represented a mix from various lots.

Clean Rice Lot 43:

This lot went into invoices 6634, 6639, 6644, T-126, T-127, T-128, and P-1006 (R. 327-329). No evidence was introduced as to the component part of those invoices, except invoice 6634 above set forth, but they all consisted of mixes.

Clean Rice Lot 123:

This rice went into the following invoices:

Invoices Nos. 6832, 6833, T-187, T-188, 6840, T-195, 6839. T-200, 6885, 6886, T-201, T-202, T-187, T-188, and T-182 (R. 329 et seq.). No evidence was introduced as to the lots going into these invoices but they were all mixes.

Clean Rice Lot 124:

Affiant does not have the record at this time as to what invoices this lot went into but it was mixed into a number of mixed invoices.

To have traced the cost of the various lots of clean rice that went into each invoice would have been long

involved and in fact practically impossible, and then to trace the cost of all rice going into all invoices into which any one of these clean rice lots went would have involved further and innumerable records and evidence.

This is further illustrated when it is noticed that a large number of rough rice lots and clean rice lots were involved, as, for example, in Charge 11 it referred to rough rice lot as high as No. 154 and clean rice lot as high as No. 124.

No charge was made that Bay City Rice Mills did not keep accurate and complete records of its operations.

Nor was any issue made as to the fact that the selling of rice by samples and mixing rice was usual and customary.

For example, Mr. F. A. Farda, who testified as a witness for the Secretary of Agriculture, and who is the Manager of Standard Rice Company, one of the largest rice milling companies in the United States, testified as follows:

"Mr. Farda:

Well, it is not common practice, in fact, it is not a practice to make a mixture just in order to put it in a warehouse and keep it. You make the mixture when you sell your rice, get ready to sell it, you sell it on a sample and then you make your composite mixture and your lots match your sample. *That is a common practice.*

"Mr. Davant:

Is it not a practice to make up these samples practically in the beginning of the season and to send them out as types?

"Mr. Farda:

The practice is to make hand mixes, and to send them samples, and when you sell on the samples you make your actual mixture, make it up." (R. 420-421.)

* * * *

"Mr. Farda:

The usual practice is, you don't make your mix until you have the rice sold." (R. 429-430.)

* * * *

"Mr. Farda:

You never make a mix until you have a sale made, because it would not be of material advantage to do so because you may not find another market for that particular blend that you make. *You therefore keep your rice in the original lots* to be in a position to make a blend of whatever the trade or market requires at that time." (R. 430.)

In connection with the above lots of clean rice, the Secretary's attorneys tried to make some allocation of the cost of rough rice to the different grades of clean rice produced as between fancy rice and head rice, but this was realized by all to be purely arbitrary allocation of cost without any real or sound basis for the same.

The above proceeding against Bay City Rice Mills was a proceeding before the Secretary of Agriculture to forfeit the license of Bay City Rice Mills for alleged violation of the license. The hearing was held before a representative of the Secretary of Agriculture.

In the foregoing affidavit the figure of 79c above rough rice cost has been referred to. That, as stated, was used only roughly. Under the license, the price for clean rice was to be the price fixed for rough rice plus the conversion charge plus the carload rail rate

for transporting rough rice to the miller's mill plus the administrative assessment of 5c per barrel. The conversion charge was 70c per barrel plus 9c per barrel if standard one hundred pound single packages were used for clean rice plus 5c per barrel if cotton or paper interlinings were used. This would make the spread between the rough rice price and clean rice price approximately 89c exclusive of the freight item.

(Sgd.) HOMER L. BRUCE.

Subscribed and Sworn to before me, the undersigned authority, by Homer L. Bruce, this 27th day of October, 1935.

(Sgd.) RAYMOND REILSON,
(Seal) Notary Public in and for Harris County, Texas.

AFFIDAVIT.

State of Louisiana,
Parish of Orleans.

We, L. J. Bartel, R. F. Gould, and J. J. Mayer, each first being duly sworn, deposes and says:

That we are Deputy Collectors of the Treasury Department, Internal Revenue Service, Louisiana District, working in connection with the rice processing tax division, and that the experience of each in the rice industry, prior to becoming Deputy Collectors, is as follows: L. J. Bartel has had actual experience of approximately twenty years in buying rough rice; operation of rice milling plants, and the distribution of milled rice and by-products. R. F. Gould has had actual experience as follows: Fifteen years with the largest rice millers of the industry as Office Manager, and Chief Accountant; one year as Secretary, and auditor of a rough rice buying agency for New Or-

leans rice mills, and one and one-half years as traveling auditor for the Millers Committee, an agency operating under a Marketing Agreement for the Southern Rice Industry. J. J. Mayer has had approximately seven years actual experience in buying, selling and grading rough rice and distributing milled rice, and by-products. Our broad experience, as above outlined, reveals the following facts as existing in the rice milling industry:

There is no established market price on rough rice, and the method of buying the rough rice by the millers is a competitive bidding method. Each miller has his buyer, who makes the competitive bid on the basis outlined to him by the management of the mill. The basis is as follows: Rice millers determine the price to make their bid to a producer for his rough rice based on the prevailing market price for milled rice computing the values to the different grades and by-products obtained from the processing of the rough rice being bid upon. *For example:*

A lot (parcel) of rough rice, estimated to produce (per barrel of 162 pounds) the following articles, grades, classes, etc., when processed, with estimated values as set out for each of the respective grades, classes, etc.:

Fancy Head Rice—100 pounds at 4½c	$4.50
Second Head Rice—4 pounds at 3c	.12
Screenings Rice—6 pounds at 2½c	.15
Brewers Rice—2 pounds at 2c	.04
Total yield per barrel—112 pounds.	
Total value	$4.81 plus
Approximate revenue from by-products (25c per barrel of 162 pounds)	.25
Total revenue	$5.06

Competitive bidding basis prior to the processing tax law requiring payment of a processing tax in cash: The above $5.06 is the gross value of milled rice articles and by-products resulting from a 162 pound barrel of rough rice. The mill would deduct from this gross figure the conversion charge, this conversion figure including the mills expense for processing the rough rice, and the estimated profit. Assuming that this conversion would be 60c per barrel, the mill would then bid the producer $5.06, less the 60c conversion, or $4.46 per barrel for the rough rice. The affiants solemnly swear that they have used and seen records of various rice mills establishing the basis as outlined above.

Competitive Bidding Basis after the Processing Tax Law requiring Payment of a Processing Tax in Cash: Since the beginning of the 1933 crop movement, which become available for market during the month of July, and on which the processing tax applies, the rice millers use the same basis to determine values; however, in addition to deducting the conversion charge, the rice millers deduct also the 1c per pound processing tax on the rough rice, or $1.62 per barrel, and submits his bid to the producer, less this deduction, as follows:

From the value of the same lot of rough rice as above illustrated, estimated to produce milled rice and by-products with gross values of $5.06 per barrel, the rice miller deducts the following: Conversion 60c and processing tax $1.62, or a total of $2.22 per barrel, and makes bid to the producer of $2.84 per barrel for that particular lot of rough rice.

The affiants further solemnly swear that in their practical experience they have prepared, and have seen prepared profit and loss statements for certain given periods other than the entire season; further that these profit and loss statements are prepared on particular

lots of rice, which is essential and necessary in their accounting procedure. Should the Agricultural Adjustment Act be held unconstitutional, the affiants state that the rice processors should enjoy the remedy and benefits given by Section 21 (d) of the said Agricultural Adjustment Act, as amended August 27th, 1935, because the records of buying processing and selling kept by the rice mills are adequate enough to properly allocate the cost of various grades of milled rice and its by-products, resulting from the processing of the rough rice; also to properly allocate in this cost, the processing tax, proportionately to the various grades of each lot of milled rice sold by itself alone or mixed. The greater portion of the milled rice sales are straight mill run lots without blending.

The affiants further solemnly swear that they have kept or have seen rice millers' records which reflect correct cost of production, profits from sales, etc., properly allocated to milled rice of various varieties, and grades, and by-products, and similarly allocated as to profits in selling prices, and should the Agricultural Adjustment Act be proven unconstitutional, each rice processor has sufficient records to enable him to recover in accordance with Section 21 (d) of the Agricultural Adjustment Act, as amended.

Summed up, the introduction of the rice processing tax has in no wise altered the customary manner or procedure followed by the rice milling industry in conducting their business.

(Sgd.) L. J. BARTEL,
(Sgd.) R. F. GOULD,
(Sgd.) JAMES J. MAYER.

Subscribed and sworn to before me this 28th day of October, 1935.

(Sgd.) HOMER R. ROBINSON,
Deputy Collector.

DECREE.

Filed October 28, 1935.

(Title Omitted.)

This cause came on today to be heard upon the application of the plaintiff for a Preliminary Injunction, as well as upon the motion filed on behalf of the defendant to dismiss the bill of complaint, and was argued by counsel for the respective parties;

Whereupon, and upon consideration thereof, and for the reasons orally assigned;

It is Ordered, Adjudged and Decreed that the application for the Preliminary Injunction be and the same is hereby denied;

It is Further Ordered, Adjudged and Decreed that the plaintiff's petition and bill of complaint in all respects be dismissed.

(Signed) : JOHN McDUFFIE, Judge.

New Orleans, Louisiana, October 28, 1935.

MOTION FOR INJUNCTION PENDING APPEAL.

Filed Oct. 29, 1935.

(Title Omitted.)

Comes now the plaintiff in the above entitled and numbered cause and moves the Court to grant plaintiff an injunction pending appeal for the reason that, unless such injunction pending appeal is granted plaintiff,

plaintiff will be compelled to pay the taxes referred to in plaintiff's petition before plaintiff's appeal can be determined by the Circuit Court of Appeals, thus causing it great and irreparable injuries. Plaintiff offers to furnish good and sufficient bond by a solvent surety company in an amount to be fixed by the Court, if the Court should grant its prayer for injunction pending appeal.

MERRICK, SCHWARZ, GUSTE, BARNETT & REDMANN,
By MORRIS B. REDMANN,
Solicitors for Plaintiff.

Motion Denied.
(Signed) JOHN McDUFFIE, Judge.

MOTION OF PLAINTIFF FOR APPEAL AND ORDER ALLOWING SAME.

Filed October 29, 1935.

(Title Omitted.)

On motion of plaintiff in the above cause, and on suggesting to the Court that plaintiff is aggrieved by the decree entered by the Court herein on the 29th day of October, 1935, granting defendant's motion to dismiss, and that plaintiff desires to appeal therefrom with a supersedeas and a stay of proceedings in the District Court pending appeal to the United States Circuit Court of Appeals for the Fifth Circuit; and

On further suggesting to the Court that said decree is contrary to the law and the evidence for the reasons set forth in the assignment of errors filed in plaintiff's behalf herein; and

On further suggesting to the Court that this motion being filed in open Court on the entry of such decree and in the presence of counsel for defendant, no citation of appeal is necessary or need issue herein;

It is Ordered by the Court that the appeal of plaintiff from the decree entered herein to the United States Circuit Court of Appeals for the Fifth Circuit be and the same is hereby allowed with supersedeas; on appellant's furnishing bond with good and solvent surety, conditioned as required by law and to be approved by the Court in the sum of $250.00, said bond to act as a supersedeas, as well as a bond for costs and damages;

It is Further Ordered by the Court that the appeal of plaintiff from the decree entered herein be made returnable to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, on or before November 27, 1935, and that a certified copy of the record herein be transmitted to said Court of Appeals by the Clerk of this Court, and that no citation of appeal is necessary or need issue herein.

(Signed) JOHN McDUFFIE, Judge.

ASSIGNMENT OF ERRORS.

Filed October 29, 1935.

(Title Omitted.)

Comes now plaintiff and says that, in the record in the proceedings of the said Court in the above entitled cause and in the Decree made and entered therein on the 28th day of October, 1935, there is mani-

fest error and for error the said plaintiff assigns the following:

(1) The Court erred in sustaining defendant's motion to dismiss plaintiff's Bill of Complaint, because such action was contrary to the law and the evidence.

(2) The Court erred in over-ruling and not sustaining plaintiff's motion for a preliminary injunction because said ruling was contrary to the law and the evidence.

Wherefore, plaintiff prays that said Decree be, in all things, reversed, with instructions to the said District Court to grant plaintiff a preliminary injunction.

MERRICK, SCHWARZ, GUSTE,
BARNETT & REDMANN,
By MORRIS B. REDMANN,
Solicitors for Plaintiff.

APPEAL BOND.

Filed October 29, 1935.

Know all Men by these Presents, that we, Levy Rice Milling Company, Inc., as principal, and American Bonding Company of Baltimore, as surety, are held and firmly bound unto Rufus W. Fontenot, in the full sum of $250.00, to be paid to the said Rufus W. Fontenot, his attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents, sealed with our seals and dated this 29th day of October, 1935.

Whereas, lately, in the District Court of the United States for the Eastern District of Louisiana, judgment was rendered against Levy Rice Milling Company, Inc., and in favor of Rufus W. Fontenot, denying plaintiff's application for a Preliminary injunction and dismissing plaintiff's Bill of Complant, and the said Levy Rice Milling Company, Inc., having obtained an appeal to reverse said judgment, citing and admonishing the said Rufus W. Fontenot to be and appear at a session of the United States Circuit Court of Appeals for the Fifth Circuit to be holden at the city of New Orleans, La., in said Circuit Court on the 27th day of November, 1935.

Now the Condition of the above obligation is such that if the said Levy Rice Milling Company, Inc., shall prosecute its appeal to effect and answer all damages and costs, if it fail to make its plea good, then the above obligation to be void, else to remain in full force and effect.

LEVY RICE MILLING COMPANY, INC.,
By JAKE LEVY, Pres.,
Principal,

AMERICAN BONDING COMPANY OF BALTIMORE,
By LOUIS M. BODENHEIMER,
Surety,

LOUIS M. BODENHEIMER,
(Seal) Atty. in Fact.

Approved October 29th, 1935.

(Signed) RUFUS E. FOSTER, Judge.

PRAECIPE.

Filed October 31, 1935.

(Title Omitted.)

To the Honorable H. J. Carter, Clerk of the United States District Court for the Eastern District of Louisiana:

You will please include in the record upon appeal in the above entitled cause the following documents and procedures:

1. Plaintiff's original bill of complaint.

2. Defendant's motion to dismiss and answer.

3. Order of Court consolidating causes for trial and providing for evidence in cause No. 324 in Equity, Baton Rouge Rice Mill, Inc., vs. Rufus W. Fontenot, etc., to be considered as evidence in this cause.

4. Affidavit of W. M. Reid.

5. Affidavit of Homer L. Bruce.

6. Joint affidavit of L. J. Bartel, R. F. Gould and J. J. Mayer.

7. Decree of the District Court.

8. Plaintiff's motion for injunction pending appeal and order denying same.

9. Motion and order for appeal.

10. Plaintiff's assignment of error.

11. Appeal Bond.

12. This Praecipe.

13. Clerk's certificate.

(Sgd.) MERRICK, SCHWARZ, GUSTE, BARNETT & REDMANN,
Attorneys for Plaintiff and Appellant.

Approved:
(Signed) ROBERT WEINSTEIN,
Asst. U. S. Attorney, Counsel for Defendant.

Clerk's Office:

I, HENRY J. CARTER, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 34 pages contain and form a full, true and complete transcript of the record, assignment of errors and all proceedings in the cause entitled "Levy Rice Milling Co., Inc., vs. Rufus W. Fontenot, Individually and as Collector of Internal Revenue for the District of Louisiana," No. 326 In Equity of the Docket of this Court, as made up in accordance with the Praecipe for Transcript copied herein.

Witness my Hand and the seal of the said Court at the City of New Orleans, La., this 2nd day of November, A. D. 1935.

(Seal) H. J. CARTER, Clerk,

By H. W. NIEHUES,
Deputy Clerk.

[fol. 45] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AT NEW ORLEANS, LOUISIANA

No. 7949

LEVY RICE MILLING COMPANY, INC., Appellant,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Appellee

MOTION FOR PRELIMINARY INJUNCTION PENDING APPEAL—Filed November 5, 1935

Comes now the Levy Rice Milling Company, Inc., appellant in the above numbered and entitled cause, and after due notice given to the appellee above named, respectfully states to the Court that the said appellant on the 28th day of October, 1935, brought a bill in equity in the United States District Court for the Eastern District of Louisiana, New Orleans Division, entitled Levy Rice Milling Company, Inc., plaintiff, v. Rufus W. Fontenot, individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, defendant, and numbered 326 in equity, in the New Orleans Division of said United States District Court. In its bill of complaint in said cause appellant prayed for a temporary restraining order to be issued [fol. 46] immediately, and for a preliminary injunction after notice to the appellee, and for a permanent injunction on the final hearing of said cause, enjoining the appellee from assessing or collecting or attempting to assess or collect from the appellant in any manner whatsoever, whether by lien or jeopardy or distraint proceedings, in court or otherwise, any processing taxes levied under and pursuant to the Act of the Congress of the United States known as the Agricultural Adjustment Act and amendments thereto, or purported to be levied by said Act, upon the appellant for the processing of rice during the month of September, 1935, and for subsequent months, and any interest or penalty on account of appellant's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property,

real or personal, of appellant. That said application for a preliminary injunction was set down for hearing before the Judge of said District Court at New Orleans on Monday, October 28, 1935. The notice thereof was duly waived by the appellee. Prior to said hearing the said appellee filed his motion to dismiss and answer to said bill of complaint, copies of which motion and also of appellant's bill of complaint are contained in the record in this cause filed in this Court.

After a hearing had on appellant's motion for a preliminary injunction and on the said motion to dismiss, the Honorable John McDuffie, acting judge of said District Court on October 28, 1935, refused appellant's motion for a preliminary injunction, granted the motion of the appellee to dismiss the said bill of complaint and dismissed the said bill of complaint, to which appellant herein duly excepted. [fol. 47] Thereafter, on the 29th day of October, 1935, the appellant herein in open court and in the presence of counsel for appellee filed its petition for an appeal, which was duly allowed by the said judge of the said United States District Court who tried said cause, and filed at the same time its assignments of errors, and also a cost bond was duly filed and approved by the said judge of said District Court. At the time appellant presented its said petition for appeal, it also petitioned said judge of the District Court to grant it an injunction enjoining the appellee in the manner set out in its request for a preliminary injunction in its bill of complaint, pending the appeal of appellant to this Honorable Court, but the said judge of said District Court on October 29, 1935, refused appellant's said petition and refused to grant appellant said injunction pending said appeal.

Appellant has therefore perfected its appeal to the Circuit Court of Appeals for the Fifth Circuit, making said cause returnable at New Orleans, Louisiana, as provided by law. Appellant has duly caused to be prepared a transcript of the record in said cause and has filed the same, in accordance with law, and within the time allowed by law, in the Clerk's office in the Circuit Court of Appeals at New Orleans, Louisiana.

In said bill of complaint appellant alleged that the amount of processing taxes on account of the rice processed by the appellant during the month of September, 1935, was $17,721.23, and that under said Agricultural Adjustment

Act appellant was required to pay said amount to appellee on or before October 30, 1935, and that appellee was charged with the duty of collecting said tax, and if said tax [fol. 48] were not paid on or before October 30, 1935, appellee would assess said tax against the appellant and serve upon appellant notice and demand for the payment thereof and would allow appellant ten days from receipt of such notice within which to pay the same; that in the event said tax should not be paid within said time, appellee would assess against appellant a penalty equal to 5% of the amount of the tax and interest on the tax at the rate of 1% per month from the due date of the tax until paid; that if the appellant failed to pay the tax within said ten days, appellee would proceed to collect the tax, penalty and interest by filing a notice of lien on all of appellant's property and by distraining upon and selling such of appellant's property as might be necessary to realize the amount of said tax, penalties and interest; and that additional processing taxes for months subsequent to September, 1935, will accrue and be assessed against and collected from the appellant in the same manner as the tax for the month of September.

Appellant alleged that the said processing tax was illegal and unconstitutional, and violated various provisions of the Constitution of the United States in many particulars, more fully set forth in appellant's bill of complaint. The appellant also alleged that under an amendment to said Agricultural Adjustment Act approved on August 24, 1935, a Section 21 (d) was added to said Act, which section provides in substance that appellant should be allowed no recovery of any of said taxes paid, if the same should be illegal or unauthorized, unless appellant established to the satisfaction of the Commissioner of Internal Revenue, and [fol. 49] the Commissioner should so find, that neither appellant nor any person directly or indirectly under appellant's control or having control over appellant, has, directly or indirectly, included such amount in the price of the rice with respect to which it was imposed or of any article processed from the rice with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing rice, and that the price paid by the appellant or such person for said rice was not reduced by any part of such amount. Appel-

lant in said bill of complaint, alleged, as more fully set out in said bill of complaint, that under said Section 21 (d) it had no adequate remedy at law by which it could recover any part of said taxes if same were unconstitutional and illegal, and that it was impossible, owing to the peculiar conditions existing in the rice milling industry and in the purchase, milling and sale of rice, for appellant to discharge the burden placed upon it by said Section 21 (d), all as more fully set out in appellant's bill of complaint.

Appellant further alleged that in said amendment of August 24, 1935, a new section known as Section 21 (a) was added to said Agricultural Adjustment Act, which in substance provided that no suit to enjoin the collection of said processing taxes should be maintained in any court. Appellant further alleged that said section was not intended to apply, and did not apply, to the injunction prayed for by appellant, inasmuch as appellant had no adequate remedy at law. Appellant further alleged that if said section should be interpreted as prohibiting the injunction [fol. 50] prayed for by appellant, then the said section, together with the other provisions of said Act, was invalid and in violation of the Fifth Amendment to the Constitution, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes would be collected from appellant and appellant would have no remedy by which he could recover taxes and would have no remedy to prevent the collection of said unlawful taxes and would be forever deprived of the right to test the constitutionality of said taxes.

Appellant further alleged that said Section 21 (d) denied the appellant a complete and adequate remedy at law for the various other reasons set forth in said bill of complaint.

At the hearing before the District Judge appellant introduced in evidence the affidavit of W. M. Reid, Executive Secretary of The Rice Millers Association, a man of twenty-six years experience in the rice business, in which affidavit he set out fully and in detail the methods of conducting the rice business and the manner in which the rough rice market and the clean rice market is made, showing that it would be utterly impossible for any rice miller to accurately determine whether he had made a profit or a loss on any given transaction, much less prove whether he had passed the tax, or any part thereof, on. Appellant also introduced in evi-

dence the affidavit of Homer L. Bruce, a practicing attorney at the bar at Houston, Texas, setting out in detail the proceedings under a complaint brought by the Secretary of Agriculture to revoke the license of a rice mill under the Act in effect prior to the present Act. The Secretary of Agriculture sought to revoke the license of this mill for [fol. 51] failure to sell clean rice and rice products processed from rough rice at a price approximately 79c higher than the price paid for the rough rice. The affidavit showed that although the Government was able to prove the cost of the rough rice and to trace the particular rough rice into various "mixes" of clean rice and the price procured for these "mixes" of clean rice it was never able to prove that the price procured for the clean rice processed from the particular lot of rough rice was not 79c more than the price paid for the rough rice because of the fact that clean rice is customarily sold in "mixes" of various lots of rice and there was no way to allocate the price procured for the mixed rice sold to the various lots of rough rice which went into the mix.

In the meantime, appellant alleges that for the foregoing reasons and those set forth in its said bill of complaint in said cause, and because the judge of said court in his said order dismissed said bill of complaint and refused to grant appellant the injunction prayed for pending the appeal in this case, the appellee herein will, to the irreparable damage and loss of the appellant herein, proceed to collect the said taxes for September, 1935, which are now due and unpaid, from appellant, and said taxes for subsequent months, unless restrained by a preliminary injunction granted by this court. The appellant alleges that not only has it no complete remedy at law, but in fact no remedy at law at all, for the reasons hereinabove set forth and set forth more in detail in said bill of complaint, that it is faced with the alternative of paying the tax with the certainty that no remedy at law exists for its recovery in case it be held that [fol. 52] it was unconstitutionally assessed, or of refusing to pay and running the risk of becoming liable for the heavy civil and criminal penalties provided in the Act, and that the said judge of said District Court should not have dismissed said bill of complaint, but should have overruled the same, and upon the hearing should have granted the preliminary injunction as prayed for in said bill of complaint.

Appellant would further show that there is now pending in the Supreme Court of the United States a case involving the constitutionality of the said Agricultural Adjustment Act, being the same case in which the Circuit Court of Appeals for the First Circuit declared the Act to be unconstitutional, and that the Supreme Court, according to press dispatches, has set said cause for oral argument on Monday, December 9, 1935; that a decision by the Supreme Court of the United States upon the validity of the said Act may be expected within a reasonable time thereafter; that the first benefit payment to farmers provided for in said Act has been made, and that under the standard form of contract between the Secretary of Agriculture and rice farmers no further payment is due until such time after December 1, 1935, as the Secretary shall determine and declare what further amount of benefit payments shall be made and when they shall be made; that the taxes to be collected under said Act are for the purpose of making these benefit payments and that since the Secretary of Agriculture need make no further benefit payments until such time after December 1, 1935, as may be fixed by him, the delay of the Government in collecting these taxes which might be occasioned by the granting of the injunction [fol. 53] prayed for herein will not occasion any injury to the Government nor will it unduly interfere with the achievement of the program set out in said Act if the Act be held constitutional. On the other hand, as hereinabove alleged, great and irreparable damage will be done to plaintiff in the event the law is held unconstitutional unless the injunction hereinafter prayed for is granted.

Appellant further shows that unless an injunction pending appeal be granted so as to preserve the status quo, the subject-matter of the suit will be lost and the jurisdiction of this Honorable Court defeated. Such injunction is necessary to preserve the jurisdiction of this Honorable Court, and in order that appellant may enjoy the just fruits of a favorable decision on this appeal.

The appellant states that it is ready and willing to give any reasonable bond or other security that may be required by any order of this Court, including the deposit from month to month of the amount of tax due, in a depository to be designated by the court, and therefore prays that this Court make an order granting appellant a preliminary in-

junction enjoining and restraining the appellee from assessing or collecting or attempting to assess or collect from appellant in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in court or otherwise, the said processing taxes for the month of September and subsequent months and any other processing taxes under and pursuant to said Agricultural Adjustment Act upon rice processed by appellant, and any interest or penalty on account of appellant's failure to pay said processing taxes, and from imposing or giving notice of intention [fol. 54] to impose any lien for said taxes upon the property, real or personal of the appellant, pending the hearing of appellant's appeal in this case and upon such conditions and terms as to this Court may seem just.

(Original signed) M. B. Redmann.

Merrick, Schwarz, Guste, Barnett & Redmann, of Counsel.

[fol. 55] *Duly sworn to by M. B. Redmann. Jurat omitted in printing.*

[fol. 56] In United States Circuit Court of Appeals

[Title omitted]

Order Denying Motion for Preliminary Injunction Pending Appeal—November 5, 1935.

Upon the authority of Rickert Rice Milling Company, Inc., vs. Rufus W. Fontenot, etc., the application for injunction in the above numbered and entitled case is denied.

[fol. 57] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7937

RICKERT RICE MILLING COMPANY, INC., Appellant,

versus

RUFUS W. FONTENOT, Acting Collector of Internal Revenue, Appellee

Appeal from the District Court of the United States for the Eastern District of Louisiana

Motion for Preliminary Injunction Pending Appeal

Before Foster and Sibley, Circuit Judges, and Strum, District Judge

OPINION—November 5, 1935

By the COURT:

On consideration of the application for an injunction to stay collection of taxes levied under the provisions of the Agricultural Adjustment Act, as amended by the Act of August 24, 1935, the Court is of the opinion that the taxpayer has a remedy at law to recover back any taxes illegally [fol. 58] exacted and, further, that the provisions of the Act as amended deprive the Court of jurisdiction to grant injunctive relief.

It is ordered that the application be denied.

[fol. 59] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 60] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 25, 1935.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted, and the case is assigned for argument on Monday, December 16, next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 40,139. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 585. Levy Rice Milling Co., Inc., Petitioner, vs. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana. Petition for a writ of certiorari and exhibit thereto. Filed November 14, 1935. Term No. 585, O. T., 1935.

(7185-C)

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 586

FARMERS RICE MILLING CO., INC., PETITIONER,

vs.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 14, 1935.

CERTIORARI GRANTED NOVEMBER 25, 1935.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 586

FARMERS RICE MILLING CO., INC., PETITIONER,

vs.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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UNITED STATES OF AMERICA.

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

No. 327 (In Equity).

FARMERS RICE MILLING CO., INC.,

versus

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA.

Appearances:

Messrs. McCoy, King & Jones, Attorneys for Farmers Rice Milling Co., Inc., Plaintiff-Appellant.

Rene A. Viosca, Esq., United States Attorney and Robert Weinstein, Asst. U. S. Attorney, appearing on behalf of Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Defendant-Appellee.

APPEAL from the District Court of the United States for the Eastern District of Louisiana, to the United States Circuit Court of Appeals for the Fifth Circuit, returnable within thirty (30) days from the 29th day of October, 1935, at the City of New Orleans, Louisiana.

TRANSCRIPT OF RECORD.

BILL OF COMPLAINT & EXHIBITS ANNEXED.

Filed Oct. 28, 1935.

In the District Court of the United States, Eastern District of Louisiana, New Orleans Division.

Farmers Rice Milling Co., Inc.,

vs. No. 327 (In Equity).

Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana.

To the Honorable Wayne G. Borah, Judge of the United States District Court, for the Eastern District of Louisiana:

Comes now Farmers Rice Milling Co., Inc., hereinafter referred to as plaintiff and in the neuter singular, complaining of Rufus W. Fontenot, invidually and as Acting United States Collector of Internal Revenue for the District of Louisiana, hereinafter called defendant, and for cause of action shows to the Court as follows:

1.

Plaintiff is a corporation organized under the laws of the State of Louisiana, with its principal office and domicile at Lake Charles, in Calcasieu Parish, Louisiana. The defendant is a citizen of the State of Louisiana, residing at New Orleans, Louisiana, and is the duly appointed, commissioned, qualified and Acting United States Collector of Internal Revenue for the State of Louisiana.

2.

The grounds of jurisdiction of this Court in this case are that this is a suit arising under the Constitution of the United States and the laws of the United States, in of the United States and the laws of the United States, in which the matters in controversy exceed Three Thousand Dollars ($3,000.00), and this suit is also one in which an injunction is sought against an official of the United States to prevent him from unlawfully collecting processing taxes levied by the United States pursuant to certain acts of Congress, more fully set out hereinafter, and to have declared invalid and unconstitutional said acts of Congress in so far as they attempt to provide for the levy, assessment and collection of said processing tax.

3.

Plaintiff is engaged in the business of milling rice and owns and operates a rice mill at Manchester, in Calcasieu Parish, La. The milling of said rice, which constitutes processing of said rice under the terms of the Agricultural Adjustment Act, hereinafter referred to, is done wholly within said State and is a matter of intrastate commerce exclusively, being performed in its entirety within the limits of said State wherein plaintiff's rice mill is established and operated.

4.

There was adopted by the 73rd Congress and approved on May 12, 1933, an Act, P. L. No. 10, popularly known as the "Agricultural Adjustment Act," but officially entitled:

"An Act to relieve the existing national Economic emergency by increasing agricultural purchasing power,

to raise revenue for extraordinary expenses incurred by reason of the emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint stock land banks, and for other purposes."

and said Act with its amendments, for convenience hereinafter, will be referred to by its popular title, namely, the Agricultural Adjustment Act.

Said Agricultural Adjustment Act has been amended several times and particularly by an amendment approved August 24, 1935, which amendment is hereinafter referred to as the Amendment of August 24, 1935.

5.

The policy to be effectuated by the enactment of said Act, prior to the Amendment of August 24, 1935, was declared by Congress in Section 2 to be as follows:

"It is hereby declared to be the policy of Congress—

(1) To establish and maintain such balance between the production and consumption of argicultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. The base period in the case of all agricultural commodities except tobacco shall be the prewar period, August 1909-July 1914. In the case of tobacco, the base period shall be the postwar period, August 1919-July 1929.

(2) To approach such equality of purchasing power by gradual correction of the present inequalities there-

in at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets.

(3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the prewar period, August 1909-July 1914."

By said Amendment of August 24, 1935, Subsection (1) of said Section 2 was amended by inserting at the beginning thereof the words

"Through the exercise of the powers conferred upon the Secretary of Agriculture under this title."

and Subsections (2) and (3) were stricken out and the following inserted in lieu thereof:

"(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section."

Plaintiff alleges that under no provision of the Constitution of the United States is the Congress of the United States authorized to provide for said processing taxes for the purpose of accomplishing any of

said policies above set forth, and the levy, assessment and collection of said taxes have been provided for in said Act, not for the purpose of raising revenue, but for the purpose of accomplishing the things set out in said declaration of policy of Congress and for said reasons the levy, assessment and collection of said taxes are wholly illegal, unlawful and unwarranted under the Constitution of the United States.

6.

Section 8 of said Agricultural Adjustment Act provides in substance that, in order to effectuate the declared policy of the Act, the Secretary of Agriculture shall have power to provide for a reduction and adjustment in the acreage and production for market, or both, of any basic agricultural commodity, including rice, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith, in such amounts as the Secretary finds best calculated to effectuate the declared policy of the Act, to be paid out of the moneys hereinafter referred to.

Section 9(a) of said Agricultural Adjustment Act levies the processing taxes thereinafter provided. It then provides that when the Secretary of Agriculture determines that any one or more payments (including said rental or benefit payments) authorized to be made under Section 8 of said Act or to be made with respect to any basic agricultural commodity, he shall proclaim such determination and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation. Said Act, however, provided that with respect to rice the processing tax for the period from April 1, 1935, to July 31, 1936, should be at the rate of 1c

per pound of rough rice. Under a similar provision of said Act before being amended by the Amendment of August 24, 1935, the Secretary was directed to proclaim, and did proclaim, before April 1, 1935, that rental or benefit payments would be made with respect to rice and the processing tax of 1c per pound of rough rice would be in effect on and after April 1, 1935.

Section 9(b) of said Agricultural Adjustment Act provides that the processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, as those terms are defined in the Act, plus such percentage of such difference, not to exceed 20 per centum, as the Secretary may determine will result in the collection in any marketing year of an amount of tax equal to (A) the amount of credits or refunds which he estimates will be allowed during such period with respect to the commodity and (B) the amount of the tax which he estimates would have been collected during such period upon all processings of such commodity exempt from tax because such processings are done by or for a State or a political subdivision or an institution thereof, except that the processing tax on rice for the period above mentioned should be at the rate of 1c per pound of rough rice.

Section 12(a) of said Act, prior to the Amendment of August 24, 1935, appropriated the sum of $100,000,000.00 to be available to the Secretary of Agriculture for administrative expenses under Title 1 of said Act and for rental and benefit payments made with respect to reduction in acreage or reduction in production for market under Part 2 of said Title 1. Section 12(a) of said Act, after said amendment, appropriated the said sum of $100,000,000.00 to the Secretary for administrative expenses under Title 1

and for payments authorized to be made under Section 8, including said rental and benefit payments made with respect to adjustment and reduction in acreage or production for market of basic agricultural commodities, including rice.

Section 12(b) of said Act, prior to said Amendment of August 24, 1935, provided that, in addition to said $100,000,000.00, the proceeds derived from all processing taxes imposed under said Title 1 were appropriated to be available to the Secretary of Agriculture for expansion of markets and removal of surplus agricultural products and administrative expenses, rental and benefit payments, and refunds on taxes. Section 12 (b) of said Act as amended by said Amendment of August 24, 1935, provided that, in addition to said $100,000,000.00 a further sum was appropriated to be available to the Secretary of Agriculture for payments authorized to be made under said Section 8, including said rental and benefit payments, said sum so appropriated to be equal to the proceeds derived from all processing taxes imposed under said Act.

7.

Acting pursuant to the purported authority given to him under said Agricultural Adjustment Act, the Secretary of Agriculture under date of April 18, 1935, through R. G. Tugwell, the then acting Secretary of Agriculture, promulgated certain rulings relating to the 1935 Southern Rice Production Adjustment Program, a copy of which rulings is attached hereto as Exhibit A and made a part hereof as if fully copied herein at this point. Under said rulings the Secretary of Agriculture allotted acreage to be planted in rice and barrels of rice to be produced, (a barrel being defined as being one hundred sixty-two pounds of rough rice)

in the States of Arkansas, Louisiana and Texas as follows:

	Acres.	Barrels.
Arkansas	135,000	1,834,722
Louisiana	364,500	3,898,333
Texas	142,500	2,010,833

Said rulings provided for a State Committee appointed by the Secretary of Agriculture for each State and for various forms and applications to be filled out by those desiring to produce rice and to be filed with the said State Committee. Said rulings provided that the base period for Texas should be the years 1931 to 1933, inclusive, and for Arkansas and Louisiana should be the years 1929 to 1933, inclusive. Said rulings further provided that the said State Committee should make an allotment to a producer applying to the Secretary of Agriculture through said State Committee for permission to grow rice during the year 1935, by taking the average acreage planted by such producer during the base period applicable to him and by reducing this result by 20% in Arkansas and in Louisiana and by 22% in Texas; and should give an allotment or permission to said producer to plant said 80% (in the case of Arkansas and Louisiana) or 78% (in the case of Texas) of the average acreage planted by him during said base period. Said rulings further provided for said State Committee to allot to each such producer a quota of barrels of rice that he might produce during the year 1935 by allotting to him 80% (if in Arkansas or Louisiana) or 78% (if in Texas) of the average number of barrels of rice raised by him during said base period.

If a producer had produced rice during any of the years constituting his base period, he was eligible to obtain an allotment and a quota from said State Committee, and if he should obtain such allotment and

quota, he was then eligible to execute a contract with the Secretary of Agriculture in the form shown by Exhibit B attached hereto and made a part hereof for all purposes as if copied in full at this point. If said producer executed said contract and it was accepted by the Secretary, he was then eligible for the benefit payments to be made by the Secretary as provided for in said agreement. However, if a producer had not produced rice during any of the years constituting his base period, he was not eligible to execute said contract with the Secretary and was not eligible for the benefit payments provided for therein. Likewise, if a producer did not execute such contract, or if he executed such contract and it was not accepted by the Secretary, he was not eligible for the benefit payments as provided for therein.

Plaintiff alleges that said processing taxes were not levied under the taxing power of the United States and for the purpose of raising revenue, but were levied for the purpose of raising money with which the Secretary of Agriculture could make rental or benefit payments to producers of agricultural products, including rice, and for the purpose of controlling, regulating, and reducing the amount of acreage that would be planted to rice and the amount of rice that would be grown, and to accomplish the purposes set out in Section 2 of said Act, and that the Congress of the United States had no authority under the Constitution of the United States to levy said processing taxes for said purpose and for said objects.

8.

Section 8 further provides that, in order to effectuate the declared policy of the Act, the Secretary is empowered to provide for a reduction in acreage or a reduction in production of any

basic agricultural commodity through agreements with producers, and to provide for rental or benefit payments in connection therewith in such amounts as the Secretary deems fair and reasonable, but there is no standard or measure established or provided in said Act by which the said Secretary shall be guided in providing for said reduction in acreage or production or in the amount of the rental or benefit payments, and said provisions are wholly invalid and violative of Article 1 of the Constitution of the United States which vests all of the legislative power in the Congress of the United States, and is an invalid and unconstitutional delegation of legislative power by Congress to the Secretary of Agriculture.

Plaintiff further alleges that the Secretary has made no findings whatsoever, and if he has made any such findings, they are wholly insufficient to support his action in providing said method of reduction of acreage and production of rice as above set forth, and his said regulations and provisions concerning said reduction of acreage and reduction of production and amounts of benefit payments are wholly arbitrary and unsupported by any findings, or at least any sufficient findings, by the Secretary of Agriculture and are not authorized by said Act or the Constitution of the United States.

9.

Section 9(b) of said Act provides that if the Secretary of Agriculture has reason to believe that the processing tax levied on any commodity will cause such reduction in the quantity of such production domestically consumed as to result in the accumulation of surplus stock thereof or in the depreciation of the farm price of the commodity, then he shall cause an investigation to be made on due notice and opportunity for hearing to interested parties, and if thereupon the

Secretary finds that such result will occur, then the processing tax on such commodity shall be at such rate as will prevent such accumulation of surplus stock and depreciation of said farm price. Said provision applies to the processing tax levied upon rice. Said provision sets no proper standard by which the Secretary shall be guided in determining the rate of the processing tax on rice or how long said tax of one cent (1c) per pound shall remain on rice, and the continuation of said processing tax being dependent upon said action by the Secretary, said provision is an unconstitutional delegation of legislative power to the Secretary of Agriculture in violation of Article 1 of said Constitution vesting the legislative power in the Congress, and for said reasons the said Act in levying said processing tax is void and illegal.

10.

In addition to the foregoing reasons, the said Agricultural Adjustment Act and its provisions for the levying, assessment and collection of said processing taxes upon rice processed by this plaintiff are void, illegal and in violation of the Constitution of the United States for the following reasons:

1. They are an attempt and effort by the United States to regulate, control and reduce the production of certain agricultural commodities specified in said Act, including rice. The so-called processing taxes imposed by said Act are an integral part of the scheme, attempt and effort of regulating, controlling and reducing the production of such commodities, which attempt, effort and scheme is not within the scope of any of the powers vested in the Congress by the Constitution, and if said power exists as a governmental function, it is therefore within the powers reserved to the States as expressly provided by the Tenth Amendment to the Constitution.

2. The so-called processing taxes were not imposed under or in conformity with the power vested in the Congress by Section 8 of Article 1 of the Constitution to levy and collect taxes, duties, imposts and excises, in that they are not imposed to pay the debts or to provide for the common defense or the general welfare of the United States, but were imposed for the benefit of a particular class of individuals, namely, the producers of the various agricultural commodities specified in said Act who conform to the conditions laid down in said Act.

3. The said Act and provisions for the levy, assessment and collection of said processing taxes violates the provisions of the Fifth Amendment to the Constitution since the so-called processing taxes constitute the deprivation of the property of one class of citizens, including the plaintiff, namely, processors of said specified commodities, including rice, without due process of law, in that such processing taxes constitute the taking of the property of this class of citizens, including the plaintiff, not for a public purpose but for a private purpose, to-wit, the payment of gratuities or bounties or benefit payments to another class of persons, namely, the producers of the designated agricultural commodities, including rice, and particularly since this taking is without just compensation to the plaintiff and said processors.

4. Said so-called processing taxes levied by the Act are taxes in name only and not in fact. They constitute merely an exactment and imposition by the Government for the purpose, not of raising revenue for the support of the government, but of raising the price for farm products and adjusting farm income and for carrying out the policy of said Act as hereinabove set forth and for the purpose of enabling the government to carry out and effectuate the said attempt, effort and scheme of the United States as hereinabove set out.

5. Under the terms of Article 1, Section 1, of the Constitution of the United States, the legislative powers granted to the Federal Government are vested in the Congress; whereas, the said Act purports to vest powers in the Secretary of Agriculture, who alone is to determine, at his own discretion and without any definite standard fixed by Congress, the method of bringing about a reduction or adjustment in acreage and production of agricultural commodities, including rice; to provide for rental or benefit payments in connection therewith in such amounts as the Secretary may deem fair and reasonable; to determine how long the said tax of 1c per pound upon the processing of rice shall remain in effect, and if the Secretary changes said rate, what rate shall be fixed. In said respects the said Act involves an invalid delegation to the Secretary of Agriculture by Congress of powers vested exclusively in it by the Constitution and because of said things the said Act delegates said legislative powers to the Secretary of Agriculture and said powers are conferred exclusively on Congress by said Article 1; Section 1; Article 1, Section 8, clause 18; Article 11, Section 1; Article 1, Section 7, clause 1; and Article 1, Section 9, clause 7 of the Constitution.

6. The said taxes if construed as direct, violate Article 1, Section 9, clause 4, and Article 1, Section 2, clause 3 of the Constitution, because not apportioned according to population.

7. The said taxes are not excise taxes, and are not uniform throughout the United States as required by Article 1, Section 8, clause 1.

8. The said alleged taxes cannot be levied under Article 1, Section 8, clause 3, regulating commerce, because neither the production nor processing of commodities, including the processing of rice done by plaintiff, is in interstate commerce and cannot be regulated

by Congress and in so far as this plaintiff is concerned, its processing of said rice is not interstate commerce and cannot be regulated by Congress.

11.

Under the terms of said Act and orders of the Secretary of Agriculture and the Secretary of the Treasury, the plaintiff is required to file returns with the defendant on or before the 30th day of October, 1935, showing the amount of rice processed by the plaintiff during the month of September, 1935, and the amount of said so-called processing tax on account of said rice processed by the plaintiff during said month, and plaintiff is required to pay said amount to the defendant on or before October 30, 1935. The amount of said processing taxes on account of the rice processed by the plaintiff during said month of September is $11,946.25. The defendant as said Collector of Internal Revenue is charged with the duty of collecting said tax, and if the plaintiff does not make said payment on or before October 30, 1935, the said defendant will assess said tax against the plaintiff and will serve upon the plaintiff notice and demand for the payment of said tax, and the plaintiff will be allowed ten days from the receipt of such notice and demand within which to pay said tax. In the event of failure to pay said tax within said time, the defendant will assess against the plaintiff a penalty equal to 5 per centum of the amount of the tax and interest on the tax at the rate of 1 per centum from the due date of the tax until it is paid; if plaintiff fails to pay said tax within the ten days after receipt of said notice and demand, the defendant will proceed to collect the tax, penalty and interest by filing a notice of lien upon all of plaintiff's property, and by distraining upon and selling such of plaintiff's property as may be necessary in order to realize the amount of said tax, penalties and interest. Additional processing taxes for the months sub-

sequent to September, 1935, will accrue and will be assessed against and collected from plaintiff, just as the processing tax for the month of September will be, in the manner described, unless the defendant is restrained and enjoined from assessing and collecting said taxes. Plaintiff has its rice mill at the place stated in paragraph 3 hereof with a large inventory of rough rice and clean rice, bank accounts and cash on hand. Repeated levies upon and distraint of its property from month to month will cause plaintiff irreparable injury and damage, in that such levies and distraints will impair the valuable good-will of its business; will seriously interfere with, if not prevent, the actual operations of its plant and the sales of its product; and will result in a permanent injury to its business and good-will. Furthermore the tax, if once paid by plaintiff, will be irretrievably lost to plaintiff, to its great and irreparable injury.

12.

Plaintiff further shows that by the Amendment of August 24, 1935, Section 30, of said amendment added a new section to the Agricultural Adjustment Act designated as Section 21, a copy of which Section 21 is attached hereto and marked Exhibit C. Plaintiff does not have an adequate and complete remedy at law as to taxes levied and assessed under said Act because of the provisions of Section 21(d) of said Agricultural Adjustment Act. Under Section 21(d) a recovery will not be allowed to the plaintiff for any amount of the tax paid by plaintiff unless it shall be established that the plaintiff has not directly or indirectly included such amount in the price of the rice with respect to which it was imposed or passed on any part of any such amount to the vendee, or included any part of such amount in the charge or fee for processing, and that the price paid by the plaintiff for rough rice was not reduced by any part of such amount.

Plaintiff states that it is an impossibility to prove or attempt to prove what portion, if any, of the processing taxes paid by it has been either deducted from the purchase price of rough rice or added to the selling price of clean rice for the following reasons:

Rice millers buy rough rice at the market price, a price that is established by the competitive bidding of the many rice millers. Rough rice is bought in large quantities and kept on an average of several months before the clean rice made from it is sold, and because of said facts the miller has no way of definitely knowing at the time of the purchase of rough rice whether he will make a profit or loss on the milling and selling of rice. A major factor in determining the market price of rough rice is the market price of clean rice at the time the rough rice is bought but there is no assurance, however, that the market price for clean rice will be the same at the time the miller actually sells the clean rice milled from the rough rice.

The miller who buys rough rice must pay the market price as established under these conditions, and has no power to fix or make the market price himself. Having no power to make prices, he cannot arbitrarily depress the market price of rice in order to pass the processing tax back to the producer.

Likewise, the miller sells the clean rice in competition with many other rice millers, and also in competition with many other food products, such as wheat, potatoes, beans and other food products, that can be substituted for rice. Under such circumstances, if the price of clean rice is pushed too high, consumers will shift to other products with the result that the demand for rice will decline until the price of rice falls to where people will buy it instead of other competitive commodities. Under these circumstances the rice miller cannot fix or make

the price for clean rice, and cannot arbitrarily increase the price of clean rice in order to pass the processing tax on to the purchaser of clean rice.

In addition, rough rice when milled produces many grades of rice and products thereof. It produces extra fancy head rice, fancy head rice, head rice, second head rice, screenings, brewers, polish, bran, and hulls, all of which commodities have varying values, extra fancy rice being the most valuable and the other grades being of less value in the order above set forth. Extra fancy, fancy, head and second head rice are generally sold for human consumption as rice. Screenings are sold to some extent for direct consumption by human beings. Brewers and screenings are a very low priced commodity and are used in general by breweries. Polish, bran and hulls are sold generally for stock feed. Some of such products, particularly brewers, polish, bran and hulls are sold practically always for a less price per pound than is paid for the rough rice per pound. There is no definite proportion by which the price paid for rough rice can be allocated in any way to these different grades of rice, so that it is impossible to tell with any degree of accuracy how much the rice and rice products that have been produced from any particular lot of rough rice have cost, making it impossible to tell what amount of the processing tax, if any, has been passed on to the purchaser of these articles.

Furthermore, the processing tax is levied upon the first processing of the rough rice and must be paid by the end of the calendar month following the month in which the processing occurred. On the other hand, when a lot of rough rice has been processed in any month, some of the grades may be sold immediately, whereas some of the other grades produced from said rice may be kept for several months before being sold, and it is thus impossible to tell how much has been

received for the clean rice and its products that are produced from any month's processing, and it is impossible to tell how much, if any, of said processing tax has been passed on to the purchaser of said clean rice.

Indeed, it is impossible even to determine whether, for any given month, the mill operations have resulted in a gain or loss and it is only at the end of the season that a gain or loss *for the season* can be determined.

In addition, in the cost of rough rice processed during any month, there is an additional item of the cost of the milling of such rice. The cost of milling rice depends upon many factors so that it is impossible to determine what has actually been the cost of milling any particular lot of rice. There are many varieties of rice, some of which have longer grains than others. Different processes of milling must be used for each different kind and variety of rice, and where the plaintiff and other millers have on hand varied and sundry varieties and kinds of rice it is necessary in the operation of the mill to change quickly from one kind of rice to another as the milling of one lot of rice is completed and the milling of another kind begun. In addition, lots of rice of the same variety will vary the one from the other due to the varying amounts of moisture in the rice, varying conditions under which the rice was harvested, and many other factors, which makes it necessary to vary the operation of the rice mill in many respects as between lots of rice. In addition, the output of a mill in barrels per day varies because of all these factors very considerably. Under all the circumstances, it is impossible for a mill to determine the cost to it of the milling of any particular lot of rice, which cost must necessarily enter into a deter-

mination of whether in selling the clean rice it has included any part, or what part, of the processing tax in the price for which it sells its clean rice and rice products.

In addition, owing to the peculiar nature of the rice business and the customary manner of selling rice that prevails in the rice industry, it is impossible for the plaintiff and other rice millers to determine the cost of any particular rice that has gone into the clean rice that is covered by any particular sale. The clean rice that is obtained from any particular lot of rough rice is not sold in the trade by itself alone. At the beginning of the season plaintiff and other rice mills know approximately the different kinds of rice that they will have during the season. In the early part of the season and as the season progresses, plaintiff and other millers make up samples of rice of the kind that they have determined they will be able to supply during the season. Owing to the varied character of clean rice out-turn from rough rice, these samples are made up of mixtures of different kinds of rice. It has been found impossible to make up such samples entirely of one kind of rice from one lot of rough rice as it is impossible to match in any appreciable quantity a sample of one lot of clean rice with another lot of clean rice. Clean rice is sold on these samples and when an order is obtained for a given amount of clean rice of a certain sample, the plaintiff and other rice millers then find what different lots of clean rice they have on hand which by mixing will produce the samples upon which the sale has been made. As a result, when a sale of clean rice is made, the order is filled by a mixture of clean rice which is made up from many different lots of clean rice. These different lots of clean rice have been milled from different lots of rough rice for which different prices have been paid. As a result the rice that goes into a clean

rice sale has come from many different sources and has been milled under many different conditions and it is impossible to tell exactly the cost of such clean rice under the circumstances. In addition, part of the clean rice obtained from a lot of rough rice may be carried for many months and mixed on different sales with innumerable combinations of other lots of clean rice so that it is impossible to trace through the history of rice processed during any month to determine what price was obtained for it, whether it was sold at a profit or a loss, and what part, if any, of the processing tax has been passed on to the purchaser.

Furthermore, there is no way in which the cost of a lot of rough rice can be allocated between the various grades of rice and the various rice products produced from such lot except by speculation for the use of arbitraries.

In short, it is impossible to determine, statistically or otherwise, where the ultimate burden of the processing tax falls—how much of it is paid by the consumer, how much by the producer, or how much by the processor.

In view of the above facts, the purported remedy given by Section 21(d) of said Agricultural Adjustment Act is wholly inadequate and is in fact a statutory denial of any legal remedy at all.

13.

In addition, the conditions imposed upon the right of the plaintiff to recover taxes paid by it must, under Section 21(d) be established to the satisfaction of the Commissioner of Internal Revenue, and no provision is made for judicial review. The transcript of the hearing before the Commissioner of Internal

Revenue is the sole record of the case on appeal to the Courts. The effect of such section is therefore to limit the function of the judicial review to the determination of whether there was any evidence submitted to the Commissioner of Internal Revenue tending to support the findings of the Commission. Said Section 21(d) therefore deprives the plaintiff of its property without due process of law in violation of the Fifth Amendment to the Constitution.

14.

Under said Section 21(d) of said Agricultural Adjustment Act, if the processing tax has been either passed on or passed back by the plaintiff, then the plaintiff cannot maintain any action to recover the tax, if it is ultimately determined to be invalid, either for its own account or for the account of the persons to whom the processing tax has been thus passed on or passed back by the plaintiff; nor can the persons to whom the processing tax has been thus passed on or passed back maintain such an action on their own account, but all right of action by anyone to recover the tax, if it has been passed on or passed back, has been wholly taken away by said amendments to said Agricultural Adjustment Act. Moreover, Section 21(a) of said Act and Section 405 of the Revenue Act of 1935 deprive the Courts of power to render declaratory judgments with respect to such alleged taxes. By reason of the impossibilities of proof hereinabove referred to, the practical effect of said Act will be to deny taxpayers and the plaintiff all means of securing a judicial decision as to the constitutionality of the processing taxes, unless the Court grants the relief herein sought.

15.

Plaintiff further shows that by Section 30 of said Amendment of August 24, 1935, Section 21(a) was

added to said Act, which in substance provides that no suit to enjoin the collection of any tax imposed by said Act shall be maintained. Plaintiff alleges that said section is not intended to apply, and does not apply, to the injunction prayed for by this plaintiff inasmuch as plaintiff has no adequate remedy at law. Plaintiff alleges, however, that if said section should be interpreted as providing that no injunction should be granted to the plaintiff as prayed for in this cause, then the said section, together with the other provisions of said Act, is invalid and in violation of the Fifth Amendment to the Constitution of the United States, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes will be collected from the plaintiff and the plaintiff will have no remedy to prevent the collection of said unlawful taxes, and will be forever deprived of the right in any manner to test the constitutionality of such taxes.

16.

Said Section 21(d) further denies to the plaintiff a complete and adequate remedy at law, because a multiplicity of claims and suits would be required to enforce such rights as are granted thereunder and because said subsection requires that the facts required to be proved thereunder be established to the satisfaction of the Commissioner of Internal Revenue and makes no provision for a judicial review of his decision.

17.

A refund of processing taxes paid by the plaintiff could not actually be obtained even if it were possible for the plaintiff to prove the negative facts required by subsection (d) of Article 21, because Congress has

not appropriated funds for the payment of such refunds and plaintiff believes, that in view of the aggregate amount involved, there is a reasonable doubt whether such appropriation would ever be made.

18.

Plaintiff is ready, able and willing and hereby offers and agrees that in the event the injunctive relief herein prayed for is granted, it will deposit at such time and in such manner as this Court shall direct the said sums claimed to be due from plaintiff for processing taxes on account of the rice processed by plaintiff during the month of September, 1935, and the plaintiff further offers and agrees that at the end of each month hereafter it will file processing tax returns with the defendant as required by existing laws and regulations and that as and when processing taxes under said returns become due and payable according to existing laws and regulations or any extension lawfully granted to the plaintiff, it will deposit the amount of such taxes in such manner as the Court may direct, all such deposits to abide the final decree in this cause.

Wherefore, plaintiff being without an adequate remedy at law prays:

1. That process issue and be served upon the defendant requiring him to appear and answer this bill, but not under oath, and answer under oath being hereby expressly waived;

2. That pending the hearing of the application for a preliminary injunction hereinafter prayed for, a temporary restraining order issue immediately enjoining and restraining the defendant until the hearing of its application for a preliminary injunction or until

the further order of this Court, from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in Court or otherwise, any processing taxes under and pursuant to said Agricultural Adjustment Act and any interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

3. That notice issue to the defendant advising him that plaintiff is hereby applying for a preliminary injunction and that plaintiff's said application will be heard at a time to be fixed by the Court in said notice, and that upon said hearing a preliminary injunction pending the final disposition of this case be issued enjoining and restraining the defendant from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in Court or otherwise, any processing taxes under and pursuant to said Agricultural Adjustment Act and any interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

4. That at the final hearing of this cause said preliminary injunction shall not have been granted, then that a permanent injunction be granted permanently restraining and enjoining the defendant from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in Court or otherwise, any processing taxes under and pursuant to said Agricultural Adjustment Act and any

interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

5. That at the final hearing it be adjudicated that the provisions of said Agricultural Adjustment Act providing for the levying, assessing and collecting of said processing taxes against and from the plaintiff are invalid, unlawful and unconstitutional on each and every one of the grounds upon which they are hereinabove alleged to be unlawful, invalid and unconstitutional; and that the defendant has no lawful right to attempt in any manner to collect said processing taxes from the plaintiff or any of the penalties or interest thereon purported to be provided for in said Agricultural Adjustment Act;

6. And plaintiff prays for such other and further relief, both general and special, to which it may be justly entitled.

(Sgd.) FARMERS RICE MILLING CO., INC.,
By W. P. WEBER, President,
(Sgd.) McCOY, KING & JONES,
By C. A. McCOY,
Attorneys for Plaintiff.

State of Louisiana,
Parish of Calcasieu.

Before me, the undersigned authority on this day personally appeared W. P. Weber, who having been by me first duly sworn, stated on oath that he is the President of Farmers Rice Milling Company, Inc., a corporation, plaintiff in the above cause, and that he has been duly authorized by said corporation to make this affidavit for and in its behalf; that he has

read the foregoing and above bill and knows the contents thereof and that the facts therein set out are true, except as to such facts as are therein stated on information and belief, and that as to those facts so stated to be on information and belief, he believes them to be true.

(Signed) W. P. WEBER.

Subscribed and Sworn to before me this 26th day of October, 1935.

(Signed) RUBY RAINS,
Notary Public in and for
(Seal) Calcasieu Parish, La.

EXHIBIT "A."

Filed October 25, 1935.

Issued April 18, 1935.

United States Department of Agriculture,
Agricultural Adjustment Administration.

Administrative Rulings Relating to the 1935 Southern Rice Production Adjustment Program.

Explanation.

These Administrative Rulings apply to and are part of the Southern Rice Production Adjustment Contract and documents pertaining thereto.

If any of the provisions are not understood, the Community or County Committee should be consulted. No producer should make out and submit to his Community or County Committee an Application or a Contract or other documents pertaining thereto with-

out knowing exactly what he must do in order to receive the benefits of the program.

I. Definitions.—As used in the Southern Rice Production Adjustment Application, Declaration, Contract, Schedule, and these Administrative Rulings:

(a) "Person," "tenant," "landlord," "producer," and "well or canal operator," include individuals, copartnerships, and corporations; and where it is required by the context, the singular shall include the plural.

(b) "Farm" means one contiguous tract of land operated as one unit substantially separate from any other such tract of land.

(c) "Producer" includes persons owning and operating their own farms; tenants operating farms rented for cash; tenants operating farms under a crop-share lease, contract, or agreement; landlords leasing to share tenants; corporations, copartnerships, or individuals furnishing water for production of rice on a share basis; and such other persons or classes of persons as the Secretary may determine to be eligible to sign Southern Rice Production Adjustment Contracts.

(d) "Participation in the production of rice" means sharing as a producer in any manner in the production of rice on a farm.

(e) "Farming Operation" means the production of rice or the participation in the production of rice by a producer.

(f) "Application" means any Application for Rice Acreage Allotment (forms Rice 1 and 2) heretofore or hereafter executed by any producer. "Application

serial number" means the serial number of any such Application.

(g) "Declaration" means any 1935 Southern Rice Declaration of Farm Acreage (form Rice 30) heretofore or hereafter executed by any producer. The "farm serial number" means the serial number of any such Declaration.

(h) "Schedule" means any Producer's Schedule of Rice Acreage (Form Rice-37) heretofore or hereafter executed by any producer. Each such Schedule shall bear the same serial number as the Contract executed by the producer who executes the Schedule.

(i) "Contract" means any 1935 Southern Rice Production Adjustment Contract (Form Rice-36) heretofore or hereafter executed by any producer. The "Contract serial number" means the serial number of any such Contract.

(j) "1935" means the period from January 1, 1935, to December 31, 1935.

(k) "1934" means the period from January 1, 1934 to December 31, 1934.

(l) The term "State base period" means the period of calendar years 1929 to 1933, inclusive.

(m) The "State Allotment" shall be 135,000 acres for Arkansas, 364,500 acres for Louisiana, and 142,500 acres for Texas. The "State Quota" shall be 1,834,-722 barrels for Arkansas, 3,898,333 barrels for Louisiana, and 2,010,833 barrels for Texas.

(n) The term "base period" in Arkansas and Louisiana means the period of the calendar years

1929 to 1933, inclusive, and in Texas the years 1931 to 1933, inclusive.

(o) The "production history" of a producer means, as the context may require, the producer's rice acreage or rice production, or both, for the base period as adjusted to the official figures and accepted by the State Committee.

(p) The "producer's Allotment" and the "producer's Quota" means respectively the rice acreage and the rice production assigned by the State Committee, acting for and on behalf of the Secretary, to the producer for 1935 and determined according to the procedure set forth in Administrative Ruling II hereof.

(q) The "acreage allocated" by the producer means that part of a producer's allotment which, in a Declaration, he allocates to a given farm as a basis for determining his share of the total rice acreage planted on that farm in 1935.

(r) "Producer's share of the rice acreage planted" and the "Producer's share of the acreage planted to rice in 1935" each means with respect to any farm, that acreage which bears the same ratio to the total rice acreage planted on that farm in 1935 (as determined upon checking compliance with the Contract in the manner prescribed by the Secretary) that the acreage allocated by the producer to that farm in a Declaration bears to the total rice acreage allocated to that farm in such Declaration.

(s) The "Secretary" means the Secretary of Agriculture of the United States.

(t) "Rice Section" means the Rice Section of the Agricultural Adjustment Administration.

(u) "Official figures" means the records of acreage and production prepared by the United States Department of Agriculture.

(v) A "barrel" means 162 pounds of rough rice.

(w) A "bushel" means 45 pounds of rough rice.

II. Determination of Allotments and Quotas.—1. The allotment of a producer shall be determined by each State Committee as follows: (a) Add the acreage of rice planted annually by each producer for his own account during the base period, after adjustment of acreage of all producers to the official figures for each state for each of the years of the base period; (b) Divide the total thus secured by five (5) in Louisiana and in Arkansas, and the total thus secured by three (3) in Texas; (c) Reduce the result obtained by 20 per cent in Louisiana and in Arkansas and the result obtained by 22 percent in Texas.

The total allotments assigned to producers in each state shall not in any event exceed the state allotment for that state.

2 The quota of a producer shall be determined by each State Committee as follows: (a) Add the number of barrels of rough rice produced annually by each producer for his own account during the base period, after adjustment of the production of all producers to official figures for each state for each of the years of the base period; (b) Divide the total thus secured by five (5) in Louisiana and in Arkansas, and the total thus secured by three (3) in Texas; (c) Reduce the result obtained by 20 percent in Louisiana and in Arkansas and the result obtained by 22 percent in Texas.

The total quotas assigned to producers in each state shall not in any event exceed the state quota for that state.

3. If the total of allotments and quotas determined according to the provisions of sections 1 and 2 of this numbered ruling, in any state, is less than the State Allotment and State Quota such excess may be allocated to producers by the State Committee, subject to approval by the Secretary or his authorized agent.

4. The Allotment and Quota are based upon the personal production history of the producer, regardless of where the rice was produced and are the measure of such history. The producer's production history shall not be transferred except as the State Committee shall, in writing, approve transfers made pursuant to the provisions of subsections a, b, and c of this numbered paragraph 4 of Administrative Ruling II. All requests for transfer of production history shall be in writing, signed by, or on behalf of the producer by his duly authorized agent, and approval thereof shall be in writing signed by at least two members of the State Committee. In no event shall the State Committee approve the transfer of production history by reason of foreclosure, execution or any forced sale.

(a) If a producer has died or has been declared legally incompetent by a Court of competent jurisdiction and has not executed, prior to the date of such death or incompetency, an Application for an allotment and quota, his records of production may be used by such heirs or devisees, or such member of the family of such deceased producer or by such members of the family of such incompetent producer as are continuing the farming operation of the deceased or incompetent producer, upon their furnishing proof of such relation-

ship and succession to the producer's farming operation.

(b) If a well or canal operator voluntarily sells his well or canal system and has not executed an application, his production history shall be transferred to such successor, provided that the former well or canal operator was not engaged in farming operations in 1934.

(c) If a partnership is dissolved before an application for an allotment and quota has been executed by or on behalf of the partnership, its records of rice production for the base period shall be divided among the partners in such proportions as is agreed upon by the partners or their authorized representatives in writing submitted to the State Committee.

5. In all figures representing final determination of individual allotments and quotas, fractions amounting to one-half a unit or less shall be dropped and fractions amounting to more than one-half a unit shall be considered a whole unit.

6. If a producer during the base period had operated in more than one state, he shall apply for an allotment and quota to the State Committee of each state in which he had farmed during the base period. Only the history earned by the producer in that state shall be presented to the State Committee in his Application. No producer shall be assigned Allotments and Quotas in two or more states, larger in the aggregate, than the Allotments and Quotas assignable to him in one state, had all of his farming operations been confined to that one state.

7. The sum of all Allotments and of all Quotas within a State shall not in any event exceed the State Allotment and Quota, respectively.

III. Transfer of Allotment and Quota.—The producer's Allotment and Quota shall not be transferred except as the State Committee shall in writing approve transfers made pursuant to the provisions of subsections a, b, c, and d of this Ruling III. In no event shall the State Committee approve the transfer of an Allotment or Quota by reason of foreclosure, execution, or any forced sale. All requests for transfer shall be made in writing signed by or on behalf of the producer by his duly authorized agent, and approval thereof shall be in writing signed by at least two members of the State Committee.

(a) If a producer dies or has been declared incompetent by a Court of competent jurisdiction after executing an Application but before executing a Contract, his allotment and quota may be transferred to such heirs, devisees, or such members of the family of such deceased producer or such members of the family of such incompetent producer as are continuing the farming operations of the deceased or incompetent producer, upon their furnishing proof of such relationship and succession to the producer's farming operation.

(b) If a producer voluntarily withdraws, either wholly or in part, from the production of rice after executing an Application but before executing a Contract, he may transfer all or part of his Allotment and Quota to such persons as are continuing his farming operation, upon proof of such withdrawal and succession.

(c) If a producer has become disabled and has retired from the production of rice after executing an Application but before executing a Contract, he may transfer all or part of his Allotment and Quota to such

person as is continuing his farming operations upon proof of such disability, retirement, and succession.

(d) Upon dissolution of a partnership, after an Application has been executed by or on behalf of the partnership, but before a Contract has been executed by or on behalf of the partnership, the Allotment and Quota shall be divided among the partners in such proportions as is agreed upon by the partners or their duly authorized representatives in writing submitted to the State Committee.

IV. Use of Allotment and Quotas by Well or Canal Operators.—If a well or canal operator has an allotment and quota assigned to him by the State Committee on the basis of his personal history as a furnisher of water on a crop share basis, such well or canal operator shall not change his status so as to use such allotment and quota in a capacity other than as a furnisher of water on a share crop basis.

V. Signing of Application, Declaration, Contracts, and Other Documents by a Person in a Representative Capacity.—

(1) In the event any document is to be executed on behalf of a Corporation, it shall be signed on behalf of the Corporation by an officer of the Corporation, who shall state his title, and affix the corporate seal to the Contract, (If the Corporation has no corporate seal, the following statement in writing shall appear over the signature, "No corporate seal required or adopted,") or by a representative of the corporation other than an officer, who has been authorized by the corporation to execute the contract by power of attorney, under seal, duly executed on behalf of the corporation on a prescribed form and filed with the Comptroller of the Agricultural Adjustment Administration at Washington, D. C., or

attached to the contract, which authorization shall be considered a part of the contract documents.

(2) In the event a document is to be signed by an executor, administrator, guardian of an incompetent person, receiver, or other person appointed by a Court in a fiduciary capacity, there shall be furnished either the original or a certified copy of the Court order of appointment or a certificate on a prescribed form showing that such person was duly appointed as such fiduciary and that the appointment is still in full force and effect.

(3) Where a document is signed by a manager or an agent for a producer, the original or a certified copy of a Power of Attorney, on a prescribed form, authorizing the manager or agent so to sign shall be furnished.

(4) If the producer is a Governmental body or agency, there shall be attached to the document a certified copy of a resolution of the Board or other authority authorized by statute to lease and contract in regard to the land and personal property covered by the contract, authorizing the execution of such document by the person executing the document on its behalf.

(5) When one producer has several documents to be signed by the same agent or attorney; a properly executed power of attorney may be filed with the Comptroller of the Agricultural Adjustment Administration to cover all such cases, and shall be considered as a part of each document so signed.

(6) A document to be signed for a partnership shall be executed in the name of the partnership and of each partner as an individual, by each member of

the partnership, or on behalf of each partner who does not personally sign, by an agent duly authorized to so sign by a Power of Attorney, on a prescribed form.

VI. Pledge of Adjustment Payments.—Adjustment payments may not be assigned under any condition. This is forbidden by the Contract, as well as prohibited by law.

However, the producer's right to adjustment payments under the Contract may be pledged in order to obtain funds (or credit) for carrying on the current operation of the farm. The expression "funds" (or credit) for carrying on the current operation of the farm and "current production credit" means funds or credit to meet any necessary expense of preparing of land, planting, cultivating, watering, harvesting, and marketing of the rice crop grown in the year 1935. Without in any way limiting the exclusiveness of the above definition, the expression shall not include cash rent or debts incurred in connection with the production of past crops.

No pledge of any producer's right to adjustment payments under his contract for any purpose other than to procure current production credit as defined above shall give rise to any obligation under the Contract upon any payee designated therein by the producer to distribute such payment, when and if accepted by such payee, to the person claiming to hold such a pledge not given for current production credit.

Dated April 18, 1935.

R. G. TUGWELL,
Acting Secretary of Agriculture.

EXHIBIT "B".

Filed Oct. 25, 1935.

Form Rice 36,
U. S. Department of Agriculture,
Agricultural Adjustment Administration,
Rice Section.
Form approved by Comptroller General, U. S.,
May 1, 1935.

1935 Southern Rice Production Adjustment Contract.

(Pursuant to and to effectuate the purposes of the Agricultural Adjustment Act, approved May 12, 1933, as amended, hereinafter referred to as the Act.)

I. Performance by Producer:

1. The undersigned producer (and each and all of them if more than one signs this instrument) hereby offer(s) to enter into a contract with the Secretary of Agriculture (hereinafter referred to as the "Secretary") upon the terms and conditions hereinafter set forth and subject to such regulations or administrative rulings (which shall be part of the terms and conditions of this contract) as have been heretofore or may hereafter be prescribed by the Secretary relating to 1935 Southern Rice Production Adjustment Contracts. This contract shall apply to every farm upon which the producer participates in any manner in the production of rice in 1935 (hereinafter referred to as "the farm(s) covered by this contract"). This offer shall become a binding contract upon its acceptance by the Secretary.

2. The producer,

(a) Represents that he has allocated to each farm upon which he will participate in any manner in the production of rice in 1935 some part of his allotment and that the total acreage allocated by the producer to all such farms does not exceed his allotment;

(b) Agrees that he will not share or participate in any manner in the production of rice in 1935 on any farm to which he has not allocated a portion of his allotment;

(c) Agrees that for the purposes of checking compliance and making payments under this contract "the producer's share of the acreage planted to rice in 1935" on each farm covered by this contract shall be that acreage actually planted to rice on such farm in 1935 which bears the same ratio to the total acreage planted to rice on such farm in 1935 that the acreage allocated by the producer to such farm bears to the total acreage allocated thereto by all persons participating in the production of rice thereon;

(d) Agrees that his total share of the acreage planted to rice in 1935 on all the farms covered by this contract shall not exceed his allotment;

(e) Agrees that the acreage permitted under this contract to be planted to rice in 1935 shall be farmed in a workmanlike manner throughout 1935;

(f) Applies for membership in the Rice Production Control Association organized pursuant to Form Rice 35 in each County or Parish in which a farm covered by this contract is located;

(g) Agrees to permit access by any authorized agent of the Secretary to the farm(s) covered by this contract, and to all fiscal books, records, and documents, regardless of where located, pertaining to the

production and/or sale of rice on or from any and all of such farms, and expressly waives any right to have such records kept confidential;

(h) Agrees not to sell, pledge, transfer, or assign, in whole or in part, this contract or his right to or claim for payments under this contract, and not to execute any power of attorney to collect such payments, and any sale, pledge or assignment, order or power of attorney shall be null and void, except that the producer may pledge or hypothecate his right to any adjustment payments under this contract for the purpose of obtaining funds (or credit) for carrying on the current operation of the farm(s) covered by this contract (hereinafter referred to as "current production credit") and such pledge or hypothecation shall operate to establish an interest or right on the part of the pledgee in and to said adjustment payments as against any other person or persons, but the pledge or hypothecation thereof shall not alter the provisions of paragraph 5 that all adjustment payment checks drawn in compliance with this contract shall be made payable to the payee therein stipulated. If the adjustment payments herein provided for shall have been pledged by the producer for current production credit, the producer, or if a payee is designated in paragraph 5 hereof and accepts such payment, then such payee if notified in writing of the pledge, shall receive the adjustment payment in trust to pay therefrom to the pledgee the amount of the obligation owing for current production credit secured by such pledge, and to pay the balance of said payment to the producer. If a payee other than the producer is named in paragraph 5 hereof, and if such payee shall not have been notified of any pledge of the adjustment payments for current production credit made pursuant to the terms of this numbered paragraph, such payee shall receive such payments in trust to pay the whole amount

thereof to the producer, it being expressly understood and agreed that the Secretary shall have no duty or obligation to see that distribution is made in accordance with the foregoing provisions, but shall have the right to enforce the performance of said trust by the payee;

(i) Represents that the statements contained herein are true to the best of his information and belief. Without limitation of any other right or remedy of the Secretary conferred by law or this contract, a material misstatement herein or in any information furnished by the producer in connection with this contract or any noncompliance by the producer with any of the terms hereof, or with any applicable regulation or administrative ruling which has been or may hereafter be prescribed by the Secretary with reference to 1935 Southern Rice Production Adjustment Contracts shall be grounds for termination of this contract by the Secretary. The determination of the Secretary that any such misstatement or noncompliance has occurred shall be final and conclusive. In the event of termination of this contract by the Secretary, the producer shall return to the Secretary all payments theretofore made under this contract, together with all costs incident to the collection thereof.

II. Performance by Secretary:

3. Amount of Payments.—The Secretary shall, as a consideration for the performance by the producer of all the terms and conditions of this contract, and in the manner and at the times specified in paragraph 4 hereof, make

(1) A first adjustment payment at a rate of 81 cents per barrel of rice, and

(2) A second adjustment payment at a rate per barrel of rice, uniformly applicable to all such contracts, to be determined by the Secretary,

upon an amount of rice determined in the manner specified in sub-paragraph (a) or (b) of this numbered paragraph, whichever shall apply:

(a) If the producer's total share of the acreage planted to rice in 1935 on all the farm(s) covered by this contract is not more than 100 per cent nor less than 85 per cent of the producer's allotment, such payments shall be made upon that number of barrels of rice which equals 85 per cent of the producer's quota.

(b) If the producer's total share of the acreage planted to rice in 1935 on all the farm(s) covered by this contract is less than 85 per cent of the producer's allotment, such payments shall be made upon that number of barrels of rice which bears the same ratio to the producer's quota that the producer's total share of the acreage planted to rice in 1935 on all such farms bears to the producer's allotment.

4. Time of Payments.

(a) The first adjustment payment shall be made as soon as practicable after August 1, 1935, provided that proof satisfactory to the Secretary, of compliance with the terms and conditions of this contract, has been submitted to the Secretary or his authorized agent.

(b) The second adjustment payment shall be made as soon as practicable after December 1, 1935, provided that proof satisfactory to the Secretary, of compliance with the terms and conditions of this contract, has been submitted to the Secretary or his authorized agent.

5. (a) All adjustment payments hereunder are for the benefit of the producer and shall be made only to the producer unless the producer shall, by naming another person in this numbered paragraph, direct that such payments be made to the person so named, in which event the payments shall be made by check drawn payable to the person so named who shall receive them subject to the provisions of this contract, and particularly subject to the provisions of subparagraph (h) of paragraph 2 hereof. If the person so named shall have died or shall refuse to accept such payment, or shall for any reason be unable to receive and distribute such payment subject to the provisions of this contract then such payment shall be made to the producer, who likewise shall receive such payments subject to the provisions of this contract and particularly subject to the provisions of subparagraph (h) of paragraph 2 hereof.

(Stamp State and County code above.)

State..... Parish } .....
County }
Community..... Contract }
Serial No. } .....

5. (b) Designated payee .....
of.....
(Address of payee)

III. Signature(s) of Producer(s).

6. In Witness Whereof, each of the undersigned has hereunto set his hand on the date indicated opposite his signature.

...., 1935.
(Witness) (Date of Producer's signature)

....
(Signature of Producer) (Application No.)

Address of Producer (Rural Route No.) .... (Box No.) .... (Post Office) ..... (State) .....

...., 1935.
(Witness) (Date of Producer's signature)

....
(Signature of Producer) (Application No.)

Address of Producer (Rural Route No.) .... (Box No.) .... (Post Office) ..... (State) .....

IV. Certification of Committees.

We Hereby Certify that we have examined the foregoing offer and that, to the best of our information and belief, the total acreage allocated by the producer to all the farm(s) covered by this contract does not exceed the producer's allotment, and hereby recommend that the foregoing offer be accepted by the Secretary.

.....
(For Community Committee)

.....
(For County Committee)

.....
(For State Committee)

.....
(For Community Committee)

.....
(For County Committee)

.....
(For State Committee)

Date....., 1935. Date....., 1935. Date....., 1935.

V. Acceptance by Secretary.

In consideration of and in reliance upon the agreements of the producer herein set forth and the repre-

sentations made by the producer in and in connection with this contract, this offer is hereby accepted, this .....day of ....., 1935.

HENRY A. WALLACE,
Secretary of Agriculture, for and on behalf of the United States,

By .....,
Representative of Secretary of Agriculture.

VI. State Committee's Certificate of Compliance.

The undersigned State committeemen certify that the producer's total share of the acreage planted to rice in 1935 on all farm(s) covered by this Contract does not exceed the producer's allotment, and further certify that the producer's allotment and quota and the producer's total share of the acreage planted to rice in 1935 on all farms upon which the producer is participating in the production of rice in 1935 are correctly stated in items 1, 2, and 3, respectively, of part VIII below, and further certify that to the best of their information and belief the producer has fully complied with all terms of this Contract and all regulations and administrative rulings issued by the Secretary applicable up to and including the date of this certificate.

Date ....., 1935.

.....
(For State Committee)

.....
(For State Committee)

VII. Producer's Certificate of Compliance.

The producer certifies that his total share of the acreage planted to rice in 1935 on all farms upon which he is participating in any manner in the production of

rice does not exceed his allotment, that his allotment and quota, and his total share of the acreage planted to rice in 1935 on all farms on which he is participating in any manner in the production of rice in 1935 are correctly stated in items 1, 2, and 3, respectively, in part VIII of this contract, and further certifies that he is not sharing in the production of rice on any farms covered by this Contract are being farmed in a workmanlike manner, and that he has fully complied with all other terms of this Contract, and with all regulations and administrative rulings issued by the Secretary, applicable up to and including the date of this certification.

..... (Witness)
Date....., 1935.

....,
(Producer.)

VIII. Certified Basis for Determining Payments.

1. Producer's allotment .....(acres) .....
2. Producer's quota .....(bbl.) .....
3. Producer's share of acreage measured .....
4. Quota percentage (item 3 ÷ item 1).... .....%*
5. Number of barrels for payment (item 4 times item 2) ....

*If the above percentage is not more than 100 nor less than 85 per cent, then 85 per cent shall be used.

Do not write in this blank; for use by Comptroller's Office.

Computation of payments:

1935 first adjustment payment Item 5 times 81¢ per bbl. ....$.....

1935 second adjustment payment, Item 5 times ....¢ per bbl.....$.....

Total .....$.....

Do Not Write in Space Below.

Certificate of Comptroller.

Audited and approved for 1935 first adjustment payment in the amount of ..... $.....

JOHN B. PAYNE,
Comptroller,

By .....,
Auditor.

Schedule No. .....

Date.....

Paid ..... by check on Treasurer of the United States in favor of payee or payees named thereon.

Check No..... $.....

Certificate of Comptroller.

Audited and approved for 1935 second adjustment payment in the amount of ..... $.....

JOHN B. PAYNE,
Comptroller,

By .....,
Auditor.

Schedule No. .....

Date.....

Paid ..... by check on Treasurer of the United States in favor of payee or payees named thereon.

Check No..... $.....

(Any intentional misrepresentation of fact made in this contract for the purpose of defrauding the United States will be subject to the criminal provisions of the United States Code.)

EXHIBIT "C".

Filed October 25, 1935.

Sec. 21. (a) No suit, action, or proceeding (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any Court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (d) of this section, may be reserved in the Court's order.

(b) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regulations of the Secretary with the approval of the President prior to the date of the adoption of this amendment,

are hereby legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which have accrued and remain unpaid on the date of the adoption of this amendment shall be assessed and collected pursuant to section 19, and to the provisions of law made applicable thereby. Nothing in this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary f Agriculture or of the President done or made prior to the date of the adoption of this amendment.

(c) The making of rental and benefit payments under this title, prior to the date of the adoption of this amendment, as determined, prescribed, proclaimed and made effective by the proclamations of the Secretary of Agriculture or of the President or by regulations of the Secretary, and the initiation, if formally approved by the Secretary of Agriculture prior to such date of adjustment programs under section 8 (1) of this title, and the making of agreements with producers prior to such date, and the adoption of other voluntary methods prior to such date, by the Secretary of Agriculture under this title, and rental and benefit payments made pursuant thereto, are hereby legalized and ratified, and the making of all such agreements and payments, the initiation of such programs, and the adoption of all such methods prior to such date are hereby legalized, ratified, and confirmed as fully to all intents and purposes as if each such agreement, program, method, and payment had been specifically authorized and made effective and the rate and amount thereof fixed specifically by prior Act of Congress.

(d) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the Court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be refunded or credited to any person (not

a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (a) and (b) of section 16, had the tax terminated by proclamation pursuant to the provisions of section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish to the satisfaction of the Commissioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the Court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any Court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held invalid a claim therefor (conforming to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2)

no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such Courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, on jurisdiction of such Courts based upon the amount in controversy.

(e) In connection with the establishment, by any claimant, of the facts required to be established in subsection (d) of this section, the Commissioner of Internal Revenue is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda, relative to any matter affecting the findings to be made by the Commissioner pursuant to subsection (d) of this section, to require the attendance of the claimant or of any officer or employee of the claimant, or the attendance of any other person having knowledge in the premises, and to take, or cause to be taken, his testimony with reference to any such matter, with power to administer oaths to such person or persons. It shall be lawful for the Commissioner, or any collector designated by him, to summon witnesses on behalf of the United States or of any claimant to appear before the Commissioner, or before any person designated by him, at a time and place named in the

summons, and to produce such books, papers, correspondence, memoranda, or other records as the Commissioner may deem relevant or material, and to give testimony or answer interrogatories, under oath, relating to any matter affecting the findings to be made by the Commissioner pursuant to subsection (d) of this section. The provisions of Revised Statutes 3174 and of Revised Statutes 3175 shall be applicable with respect to any summons issued pursuant to the provisions of this subsection. Any witness summoned under this subsection shall be paid, by the party on whose behalf such witness was summoned, the same fees and mileage as are paid witnesses in the Courts of the United States. All information obtained by the Commissioner pursuant to this subsection shall be available to the Secretary of Agriculture upon written request therefor. Such information shall be kept confidential by all officers and employees of the Department of Agriculture, and any such officer or employee who violates this requirement shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both, and shall be removed from office.

(f) No refund, credit, or abatement shall be made or allowed of the amount of any tax, under section 15, or section 17, unless, within one year after the right to such refund, credit, or abatement has accrued, a claim for such refund, credit, or abatement (conforming to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled to such refund, credit, or abatement, except that if the right to any such refund, credit, or abatement accrued prior to the date of the adoption of this amendment, then such one year period shall be computed from the date of this amendment. No interest shall be allowed or paid, or included in any judgment, with respect to any such claim for refund or credit.

(g) The provisions of section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax, or any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of section 317 of the Tariff Act of 1930.

RETURN TO RULE TO SHOW CAUSE WHY TEMPORARY INJUNCTION SHOULD NOT ISSUE.

Filed Oct 28th, 1935.

(Title Omitted.)

To the Honorable the Judge of the District Court of the United States in and for the Eastern District of Louisiana:

Now into Court comes Rufus W. Fontenot, Acting Collector of Internal Revenue, Defendant in the above entitled and numbered cause, through Rene A. Viosca, United States Attorney in and for the Eastern District of Louisiana, and Robert Weinstein, Assistant United States Attorney for said District, his attorneys, and by virtue of the rules and practice of this Court requiring the defendant in rule to file all defenses to the rule on the date set for the hearing on the application for a temporary injunction, and with full reservation of all of his rights under the pleadings in this cause,

answers the rule by stating that for lack of sufficient information to justify a belief he denies all of the allegations of paragraph two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen of the Bill of Complaint, and also denies the allegations of paragraph one with the exception of the statement relative to the defendant, which statement is admitted.

Your Respondent further avers that the proceedings should be dismissed for the reasons that this Honorable Court has no jurisdiction and that the Agricultural Adjustment Act is constitutional, valid and enforceable.

Wherefore, your Respondent prays this Honorable Court to dismiss the Bill of Complaint at Complainant's costs and to refuse granting any injunction in these proceedings, and for all general and equitable relief.

(Signed) RENE A. VIOSCA,
United States Attorney.
(Signed) ROBERT WEINSTEIN,
Asst. United States Attorney.

(Verification.)

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, personally came Rene A. Viosca, who is the United States Attorney for the Eastern District of Louisiana, who in his oath says: That in his aforesaid official capacity he is of counsel for defendant in the above case; that he has drawn the return to the rule to show cause and that all the allegations of fact therein are true and correct to the best of his knowledge, information and belief.

(Signed) RENE A. VIOSCA.

Sworn to and subscribed before me this 28th day of October, 1935.

(Signed) CLAUDE D. SHAW,
Deputy Clerk, U. S. District Court, Eastern District of Louisiana.

MOTION TO DISMISS.

Filed Oct. 28, 1935.

(Title Omitted.)

To the Honorable, the Judge of the District Court of the United States in and for the Eastern District of Louisiana:

Comes now Rufus W. Fontenot, Acting Collector of Internal Revenue, defendant in the above entitled and numbered cause, by Rene A. Viosca, United States Attorney in and for the Eastern District of Louisiana, and Robert Weinstein, Assistant United States Attorney for said District, his, attorneys, with full reservation of his rights to further plead in this cause, and moves the Court to dismiss the Bill of Complaint filed herein, with costs to be paid by the Complainant upon the following grounds and for the following reasons:

I.

That this Court is without jurisdiction to restrain or enjoin the collection of taxes herein involved, or to hear and/or determine the issues presented by said bill of complaint because:

1. Section 3224 of the Revised Statutes of the United States prohibits the maintaining in any Court of a suit for the purpose of restraining the assessment and/or collection of Federal Tax.

2. Section 21-A of the Agricultural Adjustment Act, as amended, prohibits the maintaining in any Court of a suit for the purpose of restraining the assessment and/or collection of any processing tax under the said Agricultural Adjustment Act.

3. The bill of complaint sets forth no facts which, if true, would entitle complainant to the relief prayed for in a Court of Equity.

4. Complainant has a plain, adequate and complete remedy in the ordinary course of law.

II.

That the United States of America is the real party in interest, which may not be sued without its consent.

III.

That there is no actual controversy between complainant and defendant or between any parties over which this Court has jurisdiction within the purview of the Declaratory Judgment Act.

IV.

That the Declaratory Judgment Act was not intended by the Congress to be used for the litigation of questions arising under the Revenue Laws, and particularly was not intended as a means for obtaining injunctive relief.

V.

This proceeding is prohibited by the provisions of the Declaratory Judgment Act, as amended, and cannot be maintained. (Revenue Act of 1935, approved August 31, 1935, Section 405).

Dated: this 28th day of October, 1935.

(Sgd.) RENE A. VIOSCA,
United States Attorney.

(Sgd.) ROBERT WEINSTEIN,
Assistant United States Attorney.

ORDER OF COURT CONSOLIDATING ALL CASES FOR TRIAL, ETC.

Filed Oct. 28, 1935.

United States District Court, Eastern District of Louisiana, New Orleans Division.

Docket No. 321—In Equity:

Rickert Rice Mills, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 322—In Equity:

A. B. Dore, doing business under the name of The Dore Rice Mill,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 323—In Equity:

United Rice Milling Products Co., Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 324—In Equity:

Baton Rouge Rice Mill, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 325—In Equity:

T. Simon
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 326—In Equity.

Levy Rice Milling Company, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 327—In Equity:

Farmers Rice Milling Company, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 328—In Equity:

Noble-Trotter Rice Milling Co., Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Considering the stipulation and agreement of counsel for all parties made this day in open Court;

It is Ordered that the above numbered and entitled cases be and they are hereby consolidated for the

purpose of trial and that the affidavits and evidence offered in one case be considered to apply to all.

(Signed) JOHN McDUFFIE, Judge.

New Orleans, Louisiana, October 28, 1935.

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, on this day personally appeared W. M. Reid, known to me, who being by me first duly sworn in terms of law deposed and said on his oath as follows:

My name is W. M. Reid. I reside in New Orleans, Louisiana, and am Executive Secretary of the Rice Millers' Association. My principal duties are the preparation and interpretation of statistical and economic data with regard to the rice milling industry. I have been engaged in the rice milling business since 1909, and from 1916 to 1928, I personally operated a rice mill. I am thoroughly familiar with the rice milling industry in all of its phases.

I have read all of the allegations contained in Section 12 of Plaintiff's bill of complaint and Equity 321, Rickert Rice Milling Company vs. Rufus W. Fontenot, Equity 322, A. B. Dore vs. Rufus W. Fontenot, Equity 323, United Rice Milling Products Company, Inc., vs. Rufus W. Fontenot and companion cases, and all of such allegations are true and correct in every respect.

It is true that rice millers, when they purchase rough rice, consider the fact that they will have to pay a processing tax on the milling of such rough rice. However, this is simply one of the many factors entering into the miller's determination of what he ought to

pay for rough rice. As a practical matter, when the rice miller negotiates for the purchase of a given lot of rice, he first estimates what he believes he could get for such rice after milling on the existing market for clean rice and rice products. He then estimates what he thinks it will cost him to process the rough rice into its various grades and products, and in this estimate is included the amount of the processing tax, as well as other taxes. Having made these estimates, he determines what he ought to pay for the rough rice. However this is not necessarily what he does pay, because each individual miller is buying in competition with other millers. Thus, if other millers are paying more than he thinks he ought to pay, he has to meet the price the others are paying, if he is to get any rice. No individual miller makes the rough rice market. It is a market made of the composite purchasing of all millers in the particular territory. While the estimates above referred to are made with regard to the market for clean rice and rice products at the time of the purchase of the rough rice, that market, however, does not necessarily control since rough rice is not ordinarily milled, and the clean rice and products sold until several months after the purchase of the rough rice.

Since the market for clean rice and rice products fluctuates from day to day and month to month, the prospects of the future market has a bearing on what the miller may have to pay for rough rice. Optimism with reference to the future market for clean rice on the part of a sufficient number of rice millers will force up the market for rough rice, and all millers will have to meet the increased price of rough rice (if they are to have any rice at all), even though some of them may be pessimistic as to the future market.

For example, the present market price of rough rice is quite high with reference to the present market price for clean rice and rice products. In other words, using the estimates above referred to, the cost

of rough rice on today's market plus estimated cost of milling (including the processing tax) is more than the miller could reasonably expect to procure for the rice and rice products made from such rough rice on the existing market for clean rice and rice products. This present day market for rough rice is not made by any individual miller, but is made by the composite of purchases by all millers in the territory. Thus, as I have previously said, while the processing tax is considered by the miller in determining what he ought to pay for rough rice, it is simply one of many factors entering into such determination, and is by no means controlling.

Furthermore, it is impossible to tell on any given purchase of rough rice how much, if at all, that price has been affected by the existence of the processing tax.

I am familiar with accounting and statistical methods, and I know of no possible method of keeping books and records in the rice business which would accurately reflect the gain or loss from the purchase, milling and sale of any given lot of rice as distinguished from the gain or loss from the aggregate of all transactions during a season. A profit or loss, however, may be estimated at any given time by the use of averages, predictions and arbitraries.

The rice milling business is seasonal; the season beginning on August 1st and ending on July 31st, the operations gradually increasing until the peak is reached during the months of October, November and December, and decreasing to the end of the season. For this reason as well as others, the cost of milling varies greatly from time to time during the season. The estimated cost of milling which millers use in budgeting and determining what they want to pay for rough rice is arrived at by averaging the cost of the entire season so that this factor, when used to estimate a profit or loss on a given transaction, could never be exact, and might be very

much too high or very much too low when applied to that particular transaction.

Under these circumstances, when a miller purchases a particular lot of rice, he may believe that all, or a part of the processing tax to be assessed on such rice will be absorbed by the farmer. On the other hand, he may believe that all, or a part of such tax will be absorbed by himself. However, he can never even know, much less prove, even after all the clean rice and rice products made from the particular lot of rough rice has been sold, whether he, or the farmer, or the purchaser, or all of them together has borne the ultimate economic burden of the tax. This is because any belief he may have had as to whether the burden of the tax would fall, must of necessity, have been based in part on estimates, which are in turn, based on averages, which are never accurate with respect to any given lot of rice. In addition, such belief must also be based in part on assumptions as to market conditions on clean rice and rice products, which may or may not be correct. The rough rice may go through the mill on a day when large amounts are being milled, and the cost per unit is lower than the average; or, it might go through on a day when little rice was being milled resulting in a unit cost higher than the average; or, it might go through partly on one kind of a day, and partly on another. Furthermore, the rice may not mill out what he expected, even if the market on clean rice and rice products remains the same. And, in addition, the price at which he eventually sells the clean rice and rice products may be substantially less or substantially more than the sale price on which he based his presumptions.

There is no necessary relation between the market for clean rice and for rice products, since they are sold for different purposes, and this is an added reason why the miller cannot possibly allocate the cost of a given lot of rough rice among the clean rice and rice products produced from it.

For example, it is entirely possible for the market on bran or hulls to be relatively high, while the market on the various grades of head rice is relatively low.

The rough rice market is affected by the clean rice and rice products market and vice versa, but it is as impossible to determine their relative affect on each other as it is to determine whether the hen or the egg came first. I know of no way of determining what either the rough rice or clean rice marked would be if there were no processing tax. I do know, however, that the individual miller cannot force down the price paid to the farmer for rough rice because of the tax, and thus force the farmer to pay all, or a part of the burden of the tax. The individual miller simply pays the market price for rough rice which has been fixed by the composite action of all millers, and it would be impossible to prove whether a lowering of the rough rice market was the result of the assessment of the tax, or whether it was caused by other factors, such as a drop in time clean rice and rice products market, a composite pessimism on the part of rice millers as to the future market or other factors. The same thing is true with regard to the market for clean rice and rice products, and no individual miller can arbitrarily force that market upwards in order to pass on the tax.

(Sgd.) W. M. REID.

Sworn and subscribed to before me, the undersigned authority, this 28 day of October, 1935.

(Sgd.) HARRY R. CABRAL.

(Seal) Notary Public.

State of Texas,
County of Harris.

Before me, the undersigned authority, on this day personally appeared Homer L. Bruce, who, having been by me duly sworn, stated on oath as follows:

He lives in Houston, Harris County, Texas, and is duly licensed and practicing attorney at law. He is

familiar with the bills of complaint that are being presented to the United States District Court at New Orleans, Louisiana, on behalf of certain rice millers of Louisiana seeking an injunction against the collection of processing taxes on rice, having worked with his partner Mr. John P. Bullington in the preparation of said bills of complaint, and is familiar with the general practice of the rice industry of selling rice on samples and the filling of orders for clean rice by mixing rice from different lots of clean rice in the manner set out in the bills of complaint.

This affidavit is made in connection with the allegations in said bills that it is impossible for the plaintiff rice millers to comply with the requirements of Section 21 (d) of the Agricultural Adjustment Act that they shall establish that no part of the processing tax has been passed on to the consumer or taken out of the price paid the producer before they are allowed to recover any processing taxes paid.

Section 8 (3) of the Agricultural Adjustment Act gave the Secretary of Agriculture authority to issue licenses to processors, including processors of rice, and provided that the Secretary should have the right to revoke any license for violations of its terms. Section 8 (2) of the same Act authorized the Secretary to enter into marketing agreements with processors.

In the fall of 1933, the Secretary entered into a marketing agreement with members of the southern rice milling industry, and at the same time issued a license applicable to all mills. This marketing agreement and the license were in substantially the same form. Later various amendments were made to both the marketing agreement and the license.

In the marketing agreement and in the license, the Secretary of Agriculture fixed the price to be paid to farmers for rough rice, these prices being set out in Article III of the marketing agreement and license hereinafter referred to, namely, the one effective on July 21, 1934. Article IV, Section 1 of the license

effective July 21, 1934, set out the minimum price that millers might sell clean rice for in the domestic market and that section is as follows:

"Section 1. To effectuate the purposes of this Amended license and to aid in the carrying out and enforcement of the provisions hereof, no miller shall offer for sale, sell or deliver for domestic consumption any quantity of clean rice for an amount per pocket less than the sum of

(a) the minimum price, determined pursuant to article III and Schedule 1, for the grade, variety and quantity of the rough rice from which such clean rice was milled,

(b) the conversion charge for such quantity of rough rice and prevailing at the time of such offer, sale or delivery, and

(c) the published car lot rail rate for transporting such rough rice from the customary point of delivery to the miller's mill, and

(d) the administrative assessment for such quantity of rough rice and prevailing when such rice was milled;

Provided, however, that any miller may offer clean rice for sale for export to foreign countries, on the foregoing basis less a maximum discount of 20 cents per barrel of such rough rice and may, if the rice is actually exported, sell or deliver clean rice for export to foreign countries on said basis less said maximum discount. The determination of the Millers Committee as to whether or not clean rice is actually exported

shall be final and conclusive, subject to appeal to the Secretary. Said minimum amounts, below which this section provides that clean rice shall not be offered for sale, sold, or delivered by a miller, apply f. o. b. the miller's mill.

Sec. 2. The conversion charge per barrel of rough rice shall, until and except as changed by the Secretary, be an amount equal to the sum of (a) seventy (70) cents per barrel of rough rice, (b) nine (9) cents per barrel of rough rice if standard one-hundred pound single packages are used for the clean rice, and (c) if cotton or paper inner linings or regular burlap outer slips are used for the clean rice, an additional five (5) cents per barrel of rough rice, or (d) if any other type of container is used for the clean rice, the actual invoice price for the container used. The Secretary may at any time and from time to time during the effective period increase or decrease the amount of, and/or change the basis of computation of, the conversion charge."

One of the main purposes, if not actually the main purpose, of the Agricultural Adjustment Act and this license was to increase the price of rough rice paid the farmer, and in order to keep the rough rice price at a higher level, the Secretary attempted by this Section 1 to fix the price that clean rice might be sold at as roughly 79¢ per barrel above the cost of the rough rice. It was extremely important to keep the clean rice up to this level in order to maintain the rough rice price. In the fall of 1934, the Secretary of Agriculture brought proceedings, according to the information and belief of the affiant, against a number of different rice mills in Louisiana and to affiant's knowledge against Bay City Rice Mills of Bay City, Texas, a partnership composed of W. M. Loving and three other partners. The case against the Bay City Mills was case No. 11-1-7, entitled In the Matter of W.

M. Loving, R. Q. Pegram, S. M. Clements and L. D. Clements, Individually and as Co-partners trading under the name Bay City Rice Mills. One of the original charges against the Bay City Rice Mills was Charge No. 11, which charged in general terms that the Mill had sold clean rice for domestic consumption for an amount less than the price fixed for the sale of the clean rice pursuant to this license. This Charge 11 was later made more specific as follows:

"11. That the said Licensee since the effective date of said License has violated Section 1 of Article V of said License as in effect until July 21, 1934, 12:01 A. M. Eastern Standard Time, and Section 1 of Article IV of said License as in effect from July 21, 1934, 12:01 A. M. Eastern Standard Time on, in that said Licensee has offered for sale, sold and delivered, for domestic consumption, quantities of clean rice, to-wit: Clean rice lot numbered 36 on the books of the respondent derived from rough rice lot numbered 33 on the books of the respondent and purchased from C. E. Everitt; clean rice lot numbered 43 on the books of the respondent derived from rough rice lot number 33 on the books of the respondent and purchased from C. E. Everitt; clean rice lot numbered 123 on the books of the respondent derived from rough rice lot numbered 153 on the books of the respondent and purchased from A. P. Powers clean rice lot numbered 124 on the books of the respondent derived from rough rice lot numbered 154 on the books of the respondent and purchased from J. R. Reed; for an amount per pocket less than the price fixed for the sale of such clean rice pursuant to said Section 1 of Article V of said License as in effect up until July 21, 1934, 12:01 A. M. Eastern Standard Time, and pursuant to said Section 1 of Article IV of said License as in effect from July 21, 1934, 12:01 A. M. Eastern Standard Time on."

The affiant, together with Mr. W. E. Davant of Bay City, Texas, represented the Bay City Rice Mills in this hearing before the representatives of the Secretary of Agriculture on these charges, which hearing was held in Houston, Texas, and again on December 27, 1934, and ran through January 2, 1935.

The Bay City Rice Mills in that proceeding took the position, and so advised the Secretary of Agriculture's representatives, that it was utterly impossible, owing to the manner in which the rice industry is conducted, through the sale of clean rice on samples made up of mixes of different lots of clean rice, as more fully set out in the bills of complaint presented to the United States District Court at New Orleans in the processing tax suits, to determine in the case of any lot of rice, whether the clean rice had been sold for 79¢ more than the rough rice had cost, or for the amount above the cost of the clean rice that the Secretary required under Section 1 of Article IV.

The Secretary of Agriculture's representatives had access to all the books, vouchers and records of the Bay City Rice Mills, both in connection with its rough rice purchases and its clean rice sales and had several auditors continuously working on those records. The amount paid for the rough rice purchased from Evoritt, Powers and Reed, as set forth in said Charge II was established. The clean rice derived from the rough rice purchased from these three producers was traced at the hearing into the sales of clean rice into which they entered and the price of clean rice sales was established. However, owing to the fact that each quantity of clean rice that went into a sale was made up of a mixture from various lots of clean rice, which were in turn produced from various lots of rough rice bought from different producers, and owing to the fact that there was, as is usual in the rice business, an almost infinite variation in the combinations of these mixes of clean rice lots, and owing to the fact that rough rice when milled

produces different grades of clean rice, as set forth in the above mentioned bills of complaint, the Secretary of Agriculture was never able to show in that case whether or not the Bay City Rice Mills had obtained for the clean rice derived from the Evoritt, Powers, and Reed rough rice the amount (roughly 79c) above the cost of the rough rice that Article IV, Section 1, attempted to require the mill to get. Although that was one of the charges most vitally affecting the entire rice program in affiant's belief, and although the Secretary of Agriculture through his two attorneys who prosecuted the case and through his several auditors who were continuously working on the records of the Bay City Mills made every effort to prove the charge, the Secretary of Agriculture in his findings did not find that the charge had been proven and did not find that the Bay City Rice Mills had violated the license in the manner set forth in Charge 11.

Affiant believes, and on that belief states, that the reason the Secretary of Agriculture did not find that Charge 11 had been supported by any evidence was because it was utterly impossible practically to show whether clean rice had been sold for the amount above the rough rice cost that the license required.

The charge referred specifically to the sale of clean rice lots 36, 43, 123 and 124. Evidence as to the history of those clean rice lots is as set out below.

The clean rice in each case was included in various sales, each sale being represented by a separate invoice. The history of those clean rice lots was as follows: (As shown by the record in that case.)

Clean Rice Lot 36:

This rice came from rough rice lot 33 from C. E. Everitt.. It was mixed with various other lots of rice and went in as a part of the rice sold and represented

by the following 9 invoices: Invoice Nos. 6615, 6622, 6634, 6639, 6645, 6767, 6770, 6771 and T-162 (R. 324-326).

The rice covered by invoice No. 6615 was made up of rice from various lots as follows:

39 pockets from lot 17, fancy
125 pockets from lot 31, fancy
200 pockets from lot 36, fancy
26 pockets from lot 33, heads
26 pockets from lot 31, heads
(R. 472.)

Invoice 6622 consisted of the following:

75 pockets from lot 26, fancy
250 pockets from lot 35, fancy
175 pockets from lot 36, fancy
(R. 475.)

Invoice 6634 consisted of the following:

148 pockets from lot 34 EP
75 pockets from lot 35 EP
75 pockets from lot 36 EP
81 pockets from lot 37 EP
68 pockets from lot 38 EP
150 pockets from lot 43 EP
201 pockets from lot 45 EP
(R. 478.)

There was no evidence whatsoever as to the different lots going to make up the rice on any of the other invoices heretofore or hereafter referred to, but each invoice represented a mix from various lots.

Clean Rice Lot 43:

This lot went into invoices 6634, 6639, 6644, T-126, T-127, T-128, and P-1006 (R. 327-329). No evidence

was introduced as to the component part of those invoices, except invoice 6634 above set forth, but they all consisted of mixes.

Clean Rice Lot 123:

This rice went into the following invoices:

Invoices Nos. 6832, 6833, T-187, T-188, 6840, T-195, 6839, T-200, 6885, 6886, T-201, T-202, T-187, T-188, and T-182 (R. 329 et seq.). No evidence was introduced as to the lots going into these invoices but they were all mixes.

Clean Rice Lot 124:

Affiant does not have the record at this time as to what invoices this lot went into but it was mixed into a number of mixed invoices.

To have traced the cost of the various lots of clean rice that went into each invoice would have been long involved and in fact practically impossible, and then to trace the cost of all rice going into all invoices into which any one of these clean rice lots went would have involved further and innumerable records and evidence.

This is further illustrated when it is noticed that a large number of rough rice lots and clean rice lots were involved, as, for example, in Charge 11 it referred to rough rice lot as high as No. 154 and clean rice lot as high as No. 124.

No charge was made that Bay City Rice Mills did not keep accurate and complete records of its operations.

Nor was any issue made as to the fact that the selling of rice by samples and mixing rice was usual and customary.

For example, Mr. F. A. Farda, who testified as a witness for the Secretary of Agriculture, and who is the Manager of Standard Rice Company, one of the largest rice milling companies in the United States, testified as follows:

"Mr. Farda:

Well, it is not common practice, in fact, it is not a practice to make a mixture just in order to put it in a warehouse and keep it. You make the mixture when you sell your rice, get ready to sell it, you sell it on a sample and then you make your composite mixture and your lots match your sample. *That is a common practice.*

"Mr. Davant:

Is it not a practice to make up these samples practically in the beginning of the season and to send them out as types?

"Mr. Farda:

The practice is to make hand mixes, and to send them samples, and when you sell on the samples you make your actual mixture, make it up." (R. 420-421.)

* * * *

"Mr. Farda:

The usual practice is, you don't make your mix until you have the rice sold." (R. 429-430.)

* * * *

"Mr. Farda:

You never make a mix until you have a sale made, because it would not be of material ad-

vantage to do so because you may not find another market for that particular blend that you make. *You therefore keep your rice in the original lots* to be in a position to make a blend of whatever the trade or market requires at that time." (R. 430.)

In connection with the above lots of clean rice, the Secretary's attorneys tried to make some allocation of the cost of rough rice to the different grades of clean rice produced as between fancy rice and head rice, but this was realized by all to be purely arbitrary allocation of cost without any real or sound basis for the same.

The above proceeding against Bay City Rice Mills was a proceeding before the Secretary of Agriculture to forfeit the license of Bay City Rice Mills for alleged violation of the license. The hearing was held before a representative of the Secretary of Agriculture.

In the foregoing affidavit the figure of 79c above rough rice cost has been referred to. That, as stated, was used only roughly. Under the license, the price for clean rice was to be the price fixed for rough rice plus the conversion charge plus the carload rail rate for transporting rough rice to the miller's mill plus the administrative assessment of 5c per barrel. The conversion charge was 70c per barrel plus 9c per barrel if standard one hundred pound single packages were used for clean rice plus 5c per barrel if cotton or paper interlinings were used. This would make the spread between the rough rice price and clean rice price approximately 89c exclusive of the freight item.

(Sgd.) HOMER L. BRUCE.

Subscribed and Sworn to before me, the undersigned authority, by Homer L. Bruce, this 27th day of October, 1935.

(Sgd.) RAYMOND REILSON,
(Seal) Notary Public in and for Harris County, Texas.

AFFIDAVIT.

State of Louisiana,
Parish of Orleans.

We, L. J. Bartel, R. F. Gould, and J. J. Mayer, each first being duly sworn, deposes and says:

That we are Deputy Collectors of the Treasury Department, Internal Revenue Service, Louisiana District, working in connection with the rice processing tax division, and that the experience of each in the rice industry, prior to becoming Deputy Collectors, is as follows: L. J. Bartel has had actual experience of approximately twenty years in buying rough rice; operation of rice milling plants, and the distribution of milled rice and by-products. R. F. Gould has had actual experience as follows: Fifteen years with the largest rice millers of the industry as Office Manager, and Chief Accountant; one year as Secretary, and auditor of a rough rice buying agency for New Orleans rice mills, and one and one-half years as traveling auditor for the Millers Committee, an agency operating under a Marketing Agreement for the Southern Rice Industry. J. J. Mayer has had approximately seven years actual experience in buying, selling and grading rough rice and distributing milled rice, and by-products. Our broad experience, as above outlined, reveals the following facts as existing in the rice milling industry:

There is no established market price on rough rice, and the method of buying the rough rice by the millers is a competitive bidding method. Each miller has his buyer, who makes the competitive bid on the basis outlined to him by the management of the mill. The basis is as follows: Rice millers determine the price to make their bid to a producer for his rough rice based on the prevailing market price for milled rice

computing the values to the different grades and by-products obtained from the processing of the rough rice being bid upon. *For example:*

A lot (parcel) of rough rice, estimated to produce (per barrel of 162 pounds) the following articles, grades, classes, etc., when processed, with estimated values as set out for each of the respective grades, classes, etc.:

Fancy Head Rice—100 pounds at 4½c	$4.50
Second Head Rice—4 pounds at 3c	.12
Screenings Rice—6 pounds at 2½c	.15
Brewers Rice—2 pounds at 2c	.04
Total yield per barrel—112 pounds.	
Total value	$4.81 plus
Approximate revenue from by-products (25c per barrel of 162 pounds)	.25
Total revenue	$5.06

Competitive bidding basis prior to the processing tax law requiring payment of a processing tax in cash: The above $5.06 is the gross value of milled rice articles and by-products resulting from a 162 pound barrel of rough rice. The mill would deduct from this gross figure the conversion charge, this conversion figure including the mills expense for processing the rough rice, and the estimated profit. Assuming that this conversion would be 60c per barrel, the mill would then bid the producer $5.06, less the 60c conversion, or $4.46 per barrel for the rough rice. The affiants solemnly swear that they have used and seen records of various rice mills establishing the basis as outlined above.

Competitive Bidding Basis after the Processing Tax Law requiring Payment of a Processing Tax in Cash: Since the beginning of the 1933 crop movement, which

become available for market during the month of July, and on which the processing tax applies, the rice millers use the same basis to determine values; however, in addition to deducting the conversion charge, the rice millers deduct also the 1c per pound processing tax on the rough rice, or $1.62 per barrel, and submits his bid to the producer, less this deduction, as follows:

From the value of the same lot of rough rice as above illustrated, estimated to produce milled rice and by-products with gross values of $5.06 per barrel, the rice miller deducts the following: Conversion 60c and processing tax $1.62, or a total of $2.22 per barrel, and makes bid to the producer of $2.84 per barrel for that particular lot of rough rice.

The affiants further solemnly swear that in their practical experience they have prepared, and have seen prepared profit and loss statements for certain given periods other than the entire season; further that these profit and loss statements are prepared on particular lots of rice, which is essential and necessary in their accounting procedure. Should the Agricultural Adjustment Act be held unconstitutional, the affiants state that the rice processors should enjoy the remedy and benefits given by Section 21 (d) of the said Agricultural Adjustment Act, as amended August 27th, 1935, because the records of buying processing and selling kept by the rice mills are adequate enough to properly allocate the cost of various grades of milled rice and its by-products, resulting from the processing of the rough rice; also to properly allocate in this cost, the processing tax, proportionately to the various grades of each lot of milled rice sold by itself alone or mixed. The greater portion of the milled rice sales are straight mill run lots without blending.

The affiants further solemnly swear that they have kept or have seen rice millers' records which reflect correct cost of production, profits from sales, etc., properly allocated to milled rice of various varieties, and grades, and by-products, and similarly allocated as to profits in selling prices, and should the Agricultural Adjustment Act be proven unconstitutional, each rice processor has sufficient records to enable him to recover in accordance with Section 21 (d) of the Agricultural Adjustment Act, as amended.

Summed up, the introduction of the rice processing tax has in no wise altered the customary manner or procedure followed by the rice milling industry in conducting their business.

(Sgd.) L. J. BARTEL,
(Sgd.) R. F. GOULD,
(Sgd.) JAMES J. MAYER.

Subscribed and sworn to before me this 28th day of October, 1935.

(Sgd.) HOMER R. ROBINSON,
Deputy Collector.

DECREE.

Filed October 28, 1935.

(Title Omitted.)

This cause came on today to be heard upon the application of the plaintiff for a preliminary injunction, as well as upon the motion filed on behalf of the

defendant to dismiss the bill of complaint, and was argued by counsel for the respective parties;

Whereupon, and upon consideration thereof, and for the reasons orally assigned;

It is Ordered, Adjudged and Decreed that the application for the Preliminary Injunction be and the same is hereby denied;

It is Further Ordered, Adjudged and Decreed that the plaintiff's petition and bill of complaint in all respects be dismissed.

(Signed) JOHN McDUFFIE, Judge.

New Orleans, Louisiana, October 28, 1935.

MOTION FOR INJUNCTION PENDING APPEAL.

Filed Oct. 29, 1935.

(Title Omitted.)

Comes now the plaintiff in the above entitled and numbered cause and moves the Court to grant plaintiff an injunction pending appeal for the reason that, unless such injunction pending appeal is granted plaintiff, plaintiff will be compelled to pay the taxes referred to in plaintiff's petition before plaintiff's appeal can be determined by the Circuit Court of Appeals, thus causing it great and irreparable injuries. Plaintiff offers to furnish good and sufficient bond by a solvent surety company in an amount to be fixed by

the Court, if the Court should grant its prayer for injunction pending appeal.

(Sgd.) McCOY, KING & JONES,
By C. A. McCOY,
Attorneys for Plaintiff.

Motion denied.
(Signed) JOHN McDUFFIE, Judge.

MOTION OF PLAINTIFF FOR APPEAL AND ORDER ALLOWING SAME.

Filed Oct. 29, 1935.

(Title Omitted.)

On motion of plaintiff in the above cause, and on suggesting to the Court that plaintiff is aggrieved by the decree entered by the Court herein on the 29th day of October, 1935, granting defendant's motion to dismiss, and that plaintiff desires to appeal therefrom with a supersedeas and a stay of proceedings in the District Court, pending appeal to the United States Circuit Court of Appeals for the Fifth Circuit, and

On further suggesting to the Court that said decree is contrary to the law and the evidence for the reasons set forth in the assignment of errors filed in plaintiff's behalf herein; and

On further suggesting to the Court that this motion being filed in open Court on the entry of such decree and in the presence of counsel for defendant, no citation of appeal is necessary or need issue herein;

It is Ordered by the Court that the appeal of plaintiff from the decree entered herein to the United States Circuit Court of Appeals for the Fifth Circuit be and the same is hereby allowed with supersedeas, on appellant's furnishing bond with good and solvent surety, conditioned as required by law and to be approved by the Court in the sum of $250.00 said bond to act as a supersedeas, as well as a bond for costs and damages;

It is Further Ordered by the Court that the appeal of plaintiff from the decree entered herein be made returnable to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, on or before November 27th, 1935, and that a certified copy of the record herein be transmitted to said Court of Appeals by the Clerk of this Court, and that no citation of appeal is necessary or need issue herein.

(Signed) JOHN McDUFFIE, Judge.

ASSIGNMENT OF ERRORS.

Filed October 29, 1935.

(Title Omitted.)

Comes now plaintiff and says that, in the record in the proceedings of the said Court in the above entitled cause and in the decree made and entered therein on the 28th day of October, 1935, there is manifest error and for error the said plaintiff assigns the following:

(1) The Court erred in sustaining defendant's motion to dismiss plaintiff's Bill of Complaint, because such action was contrary to the law and the evidence.

(2) The Court erred in over-ruling and not sustaining plaintiff's motion for a preliminary injunction because said ruling was contrary to the law and the evidence.

Wherefore, plaintiff prays that said Decree be, in all things, reversed, with instructions to the said District Court to grant plaintiff a preliminary injunction.

McCOY, KING & JONES,
By C. A. McCOY,
Solicitors for Plaintiff.

APPEAL BOND.

Filed October 29, 1935.

Know All Men By These Presents that we Farmers Rice Milling Company, Inc., as principal, and United States Fidelity and Guaranty Company, as surety, are held and firmly bound unto Rufus W. Fontenot, in the full sum of $250.00, to be paid to the said Rufus W. Fontenot, his attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents, sealed with our seals and dated this 29th day of October, 1935.

Whereas, lately, in the District Court of the United States for the Eastern District of Louisiana, judgment was rendered against Farmers Rice Milling Company, Inc., and in favor of Rufus W. Fontenot, denying plaintiff's application for a Preliminary injunction and dismissing plaintiff's Bill of Complaint, and the said Farmers Rice Milling Company, Inc., having obtained an appeal to reverse said judgment, citing and admonishing the said Rufus W. Fontenot to be and appear at a session of the United States Circuit Court of Appeals for the Fifth Circuit to be holden at the city of New Orleans, La., in said Circuit Court on the 27th day of November, 1935.

Now the condition of the above obligation is such that if the said Farmers Rice Milling Company, Inc., shall prosecute its appeal to effect and answer all damages and costs, if it fail to make its plea good, then the above obligation to be void, else to remain in full force and effect.

FARMERS RICE MILLING COMPANY, INC.,
By C. A. McCOY, Principal.

UNITED STATES FIDELITY & GUARANTY COMPANY,
By M. L. ARRAS, Surety,
Its Attorney in Fact (Seal)

Approved October 29th, 1935.
(Signed) RUFUS E. FOSTER, Judge.

PRAECIPE.

Filed October 31, 1935.

(Title Omitted.)

To the Honorable H. J. Carter, Clerk of the United States District Court for the Eastern District of Louisiana:

You will please include in the record upon appeal in the above entitled cause the following documents and procedures:

1. Plaintiff's original bill of complaint.

2. Defendant's motion to dismiss and answer.

3. Order of Court consolidating causes for trial and providing for evidence in cause No. 324 in Equity, Baton Rouge Rice Mill, Inc., vs. Rufus W. Fontenot, etc., to be considered as evidence in this cause.

4. Affidavit of W. M. Reid.

5. Affidavit of Homer L. Bruce.

6. Joint affidavit of L. J. Bartel, R. F. Gould and J. J. Mayer.

7. Decree of the District Court.

8. Plaintiff's motion for injunction pending appeal and order denying same.

9. Motion and order for appeal.

10. Plaintiff's assignment of error.

11. Appeal bond.

12. This Praecipe.

13. Clerk's certificate.

McCOY, KING & JONES,
By C. A. McCOY,
Attorneys for Plaintiff and Appellant.

Approved:
(Sgd.) ROBERT WEINSTEIN,
Asst. U. S. Attorney, Counsel for defendant.

Clerk's Office:

I, HENRY J. CARTER, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 50 pages contain and form a full, true and complete transcript of the record, assignment of errors and all proceedings in the cause entitled "Farmers Rice Milling Co., Inc., vs. Rufus W. Fontenot, Individually and as Collector of Internal Revenue for the District of Louisiana," No. 327 In Equity of the Docket of this Court, as made up in accordance with the Praecipe for Transcript copied herein.

Witness my Hand and the seal of the said Court at the City of New Orleans, La., this 2nd day of November, A. D. 1935.

H. J. CARTER, Clerk,

By H. W. NIEHUES,

(Seal) Deputy Clerk.

[fol. 86] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AT NEW ORLEANS, LOUISIANA

No. 7950

FARMERS RICE MILLING COMPANY, INC., Appellant,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Appellee

MOTION FOR PRELIMINARY INJUNCTION PENDING APPEAL—Filed November 4, 1935

Comes now Farmers Rice Milling Company, Inc., appellant in the above numbered and entitled cause, and after due notice given to the appellee above named, respectfully states to the Court that the said appellant on the 28th day of October, 1935, brought a bill in equity in the United States District Court for the Eastern District of Louisiana, New Orleans Division, entitled Farmers Rice Milling Company, Inc., plaintiff, v. Rufus W. Fontenot, individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, defendant, and numbered 321 in equity, in the New Orleans Division of said United States District Court. In its bill of complaint in said cause appellant prayed for a temporary restraining order to be issued [fol. 87] immediately, and for a preliminary injunction after notice to the appellee, and for a permanent injunction on the final hearing of said cause, enjoining the appellee from assessing or collecting or attempting to assess or collect from the appellant in any manner whatsoever, whether by lien or jeopardy or distraint proceedings, in court or otherwise, any processing taxes levied under and pursuant to the Act of the Congress of the United States known as the Agricultural Adjustment Act and amendments thereto, or purported to be levied by said Act, upon the appellant for the processing of rice during the month of September, 1935, and for subsequent months, and any interest or penalty on account of appellant's failure to pay said processing tax, and from imposing or giving notice of intention to

impose any lien for said taxes upon the property, real or personal, of appellant. That said application for a preliminary injunction was set down for hearing before the Judge of said District Court at New Orleans on Monday, October 28, 1935. The notice thereof was duly waived by the appellee. Prior to said hearing the said appellee filed his motion to dismiss and answer to said bill of complaint, copies of which motion and also of appellant's bill of complaint are contained in the record in this cause filed in this Court.

After a hearing had on appellant's motion for a preliminary injunction and on the said motion to dismiss, the Honorable John McDuffie, acting judge of said District Court on October 28, 1935, refused appellant's motion for a preliminary injunction, granted the motion of the appellee to dismiss the said bill of complaint and dismissed the said bill of complaint, to which appellant herein duly ex-
[fol. 88] cepted. Thereafter, on the 29th day of October, 1935, the appellant herein in open court and in the presence of counsel for appellee filed its petition for an appeal, which was duly allowed by the said judge of the said United States District Court who tried said cause, and filed at the same time its assignments of errors, and also a cost bond was duly filed and approved by the said Judge of said District Court. At the time appellant presented its said petition for appeal, it also petitioned said judge of the District Court to grant it an injunction enjoining the appellee in the manner set out in its request for a preliminary injunction in its bill of complaint, pending the appeal of appellant to this Honorable Court, but the said judge of said District Court on October 29, 1935, refused appellant's said petition and refused to grant appellant said injunction pending said appeal.

Appellant has therefore perfected its appeal to the Circuit Court of Appeals for the Fifth Circuit, making said cause returnable at New Orleans, Louisiana, as provided by law. Appellant has duly caused to be prepared a transcript of the record in said cause and has filed the same, in accordance with law, and within the time allowed by law, in the Clerk's office in the Circuit Court of Appeals at New Orleans, Louisiana.

In said bill of complaint appellant alleged that the amount of processing taxes on account of the rice processed by the appellant during the month of September, 1935, was

$11,946.25, and that under said Agricultural Adjustment Act appellant was required to pay said amount to appellee on or before October 30, 1935, and that appellee was charged with the duty of collecting said tax, and if said [fol. 89] tax were not paid on or before October 30, 1935, appellee would assess said tax against the appellant and serve upon appellant notice and demand for the payment thereof and would allow appellant ten days from receipt of such notice within which to pay the same; that in the event said tax should not be paid within said time, appellee would assess against appellant a penalty equal to 5% of the amount of the tax and interest on the tax at the rate of 1% per month from the due date of the tax until paid; that if the appellant failed to pay the tax within said ten days, appellee would proceed to collect the tax, penalty and interest by filing a notice of lien on all of appellant's property and by distraining upon and selling such of appellant's property as might be necessary to realize the amount of said tax, penalties and interest; and that additional processing taxes for months subsequent to September, 1935, will accrue and be assessed against and collected from the appellant in the same manner as the tax for the month of September.

Appellant alleged that the said processing tax was illegal and unconstitutional, and violated various provisions of the Constitution of the United States in many particulars, more fully set forth in appellant's bill of complaint. The appellant also alleged that under an amendment to said Agricultural Adjustment Act approved on August 24, 1935, a Section 21 (d) was added to said Act, which section provides in substance that appellant should be allowed no recovery of any of said taxes paid, if the same should be illegal or unauthorized, unless appellant established to the satisfaction of the Commissioner of Internal Revenue, and the [fol. 90] Commissioner should so find, that neither appellant nor any person directly or indirectly under appellant's control or having control over appellant, has, directly or indirectly, included such amount in the price of the rice with respect to which it was imposed or of any article processed from the rice with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing rice, and

that the price paid by the appellant or such person for said rice was not reduced by any part of such amount. Appellant in said bill of complaint, alleged, as more fully set out in said bill of complaint, that under said Section 21 (d) it had no adequate remedy at law by which it could recover any part of said taxes if same were unconstitutional and illegal, and that it was impossible, owing to the peculiar conditions existing in the rice milling industry and in the purchase, milling and sale of rice, for appellant to discharge the burden placed upon it by said Section 21 (d), all as more fully set out in appellant's bill of complaint.

Appellant further alleged that in said amendment of August 24, 1935, a new section known as Section 21 (a) was added to said Agricultural Adjustment Act, which in substance provided that no suit to enjoin the collection of said processing taxes should be maintained in any court. Appellant further alleged that said section was not intended to apply, and did not apply, to the injunction prayed for by appellant, inasmuch as appellant had no adequate remedy at law. Appellant further alleged that if said section should be interpreted as prohibiting the injunction prayed for by appellant, then the said section, together with [fol. 91] the other provisions of said Act, was invalid and in violation of the Fifth Amendment to the Constitution, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes would be collected from appellant and appellant would have no remedy by which he could recover taxes and would have no remedy to prevent the collection of said unlawful taxes and would be forever deprived of the right to test the constitutionality of said taxes.

Appellant further alleged that said Section 21 (d) denied the appellant a complete and adequate remedy at law for the various other reasons set forth in said bill of complaint.

At the hearing before the District Judge appellant introduced in evidence the affidavit of W. M. Reid, Executive Secretary of The Rice Millers Association, a man of twenty-six years experience in the rice business, in which affidavit he set out fully and in detail the methods of conducting the rice business and the manner in which the rough rice market and the clean rice market is made, showing that it would be utterly impossible for any rice miller to accu-

rately determine whether he had made a profit or a loss on any given transaction, much less prove whether he had passed the tax, or any part thereof, on. Appellant also introduced in evidence the affidavit of Homer L. Bruce, a practicing attorney at the bar at Houston, Texas, setting out in detail the proceedings under a complaint brought by the Secretary of Agriculture to revoke the license of a rice mill under the Act in effect prior to the present Act. The Secretary of Agriculture sought to revoke the license of [fol. 92] this mill for failure to sell clean rice and rice products processed from rough rice at a price approximately 79¢ higher than the price paid for the rough rice. The affidavit showed that although the Government was able to prove the cost of the rough rice and to trace the particular rough rice into various "mixes" of clean rice and the price procured for these "mixes" of clean rice it was never able to prove that the price procured for the clean rice processed from the particular lot of rough rice was not 79¢ more than the price paid for the rough rice because of the fact that clean rice is customarily sold in "mixes" of various lots of rice and there was no way to allocate the price procured for the mixed rice sold to the various lots of rough rice which went into the mix.

In the meantime, appellant alleges that for the foregoing reasons and those set forth in its said bill of complaint in said cause, and because the judge of said court in his said order dismissed said bill of complaint and refused to grant appellant the injunction prayed for pending the appeal in this case, the appellee herein will, to the irreparable damage and loss of the appellant herein, proceed to collect the said taxes for September, 1935, which are now due and unpaid, from appellant, and said taxes for subsequent months, unless restrained by a preliminary injunction granted by this court. The appellant alleges that not only has it no complete remedy at law, but in fact no remedy at law at all, for the reasons hereinabove set forth and set forth more in detail in said bill of complaint, that it is faced with the alternative of paying the tax with the certainty that no remedy at law exists for its recovery in case it be held that it was unconstitutionally assessed, or of refusing [fol. 93] to pay and running the risk of becoming liable for the heavy civil and criminal penalties provided in the Act, and that the said judge of said District Court should not

have dismissed said bill of complaint, but should have overruled the same, and upon the hearing should have granted the preliminary injunction as prayed for in said bill of complaint.

Appellant would further show that there is now pending in the Supreme Court of the United States a case involving the constitutionality of the said Agricultural Adjustment Act, being the same case in which the Circuit Court of Appeals for the First Circuit declared the Act to be unconstitutional, and that the Supreme Court, according to press dispatches, has set said cause for oral argument on Monday, December 9, 1935; that a decision by the Supreme Court of the United States upon the validity of the said Act may be expected within a reasonable time thereafter; that the first benefit payment to farmers provided for in said Act has been made, and that under the standard form of contract between the Secretary of Agriculture and rice farmers no further payment is due until such time after December 1, 1935, as the Secretary shall determine and declare what further amount of benefit payments shall be made and when they shall be made; that the taxes to be collected under said Act are for the purpose of making these benefit payments and that since the Secretary of Agriculture need make no further benefit payments until such time after December 1, 1935, as may be fixed by him, the delay of the Government in collecting these taxes which might be occasioned by the granting of the injunction prayed for [fol. 94] herein will not occasion any injury to the Government nor will it unduly interfere with the achievement of the program set out in said Act if the Act be held constitutional. On the other hand, as hereinabove alleged, great and irreparable damage will be done to plaintiff in the event the law is held unconstitutional unless the injunction hereinafter prayed for is granted.

Appellant further shows that unless an injunction pending appeal be granted so as to preserve the status quo, the subject-matter of the suit will be lost and the jurisdiction of this Honorable Court defeated. Such injunction is necessary to preserve the jurisdiction of this Honorable Court, and in order that appellant may enjoy the just fruits of a favorable decision on this appeal.

The appellant states that it is ready and willing to give any reasonable bond or other security that may be required

by any order of this Court, including the deposit from month to month of the amount of tax due, in a depository to be designated by the court; and therefore prays that this Court make an order granting appellant a preliminary injunction enjoining and restraining the appellee from assessing or collecting or attempting to assess or collect from appellant in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in court or otherwise, the said processing taxes for the month of September and subsequent months and any other processing taxes under and pursuant to said Agricultural Adjustment Act upon rice processed by appellant, and any interest or penalty on account of appellant's failure to pay said processing taxes, and from imposing or giving notice of intention to impose [fol. 95] any lien for said taxes upon the property, real or personal, of the appellant, pending the hearing of appellant's appeal in this case and upon such conditions and terms as to this Court may seem just.

C. A. McCoy. McCoy, King & Jones, of Counsel.

[fol. 96] *Duly sworn to by C. A. McCoy. Jurat omitted in printing.*

[fol. 97] In United States Circuit Court of Appeals

No. 7950

Farmers Rice Milling Company, Inc.,

versus

Rufus W. Fontenot, Acting Collector of Internal Revenue

Order Denying Motion for Preliminary Injunction Pending Appeal—November 5, 1935

Upon the authority of Rickert Rice Milling Company, Inc., vs. Rufus W. Fontenot, etc., the application for injunction in the above numbered and entitled case is denied.

[fol. 98] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7937

RICKERT RICE MILLING COMPANY, INC., Appellant,

versus

RUFUS W. FONTENOT, Acting Collector of Internal Revenue, Appellee

Appeal from the District Court of the United States for the Eastern District of Louisiana

Motion for Preliminary Injunction Pending Appeal

Before Foster and Sibley, Circuit Judges, and Strum, District Judge

OPINION—November 5, 1935

By the COURT:

On consideration of the application for an injunction to stay collection of taxes levied under the provisions of the Agricultural Adjustment Act, as amended by the Act of August 24, 1935, the Court is of the opinion that the taxpayer has a remedy at law to recover back any taxes il-[fol. 99] legally exacted and, further, that the provisions of the Act as amended deprive the Court of jurisdiction to grant injunctive relief.

It is ordered that the application be denied.

[fol. 100] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 101] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 25, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is

granted, and the case is assigned for argument on Monday, December 16, next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 40,140. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 586. Farmers Rice Milling Co., Inc., petitioner, vs. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana. Petition for a writ of certiorari and exhibit thereto. Filed November 14, 1935. Term No. 586, O. T., 1935.

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 587

NOBLE-TROTTER RICE MILLING CO., INC.,
PETITIONER,

vs.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FDR CERTIORARI FILED NOVEMBER 14, 1935.

CERTIORARI GRANTED NOVEMBER 25, 1935.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 587

NOBLE-TROTTER RICE MILLING CO., INC.,
PETITIONER,

vs.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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UNITED STATES OF AMERICA.

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

No. 328 (In Equity.)

NOBLE-TROTTER RICE MILLING CO., INC.,

versus

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA.

Appearances:

Messrs. McCoy, King & Jones, Attorneys for Noble-Trotter Rice Milling Co., Inc., Plaintiff-Appellant.

Rene A. Viosca, Esq., United States Attorney and Robert Weinstein, Asst. U. S. Attorney, appearing on behalf of Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Defendant-Appellee.

APPEAL from the District Court of the United States for the Eastern District of Louisiana, to the United States Circuit Court of Appeals for the Fifth Circuit, returnable within thirty (30) days from the 29th day of October, 1935, at the City of New Orleans, Louisiana.

TRANSCRIPT OF RECORD.

BILL OF COMPLAINT & EXHIBITS ANNEXED.

Filed Oct. 28, 1935.

In the District Court of the United States, Eastern District of Louisiana, New Orleans Division.

Noble-Trotter Rice Milling Co., Inc.,

vs. No. 328 (In Equity).

Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana.

To the Honorable Wayne G. Borah, Judge of the United States District Court, for the Eastern District of Louisiana:

Comes now Noble-Trotter Rice Milling Co., Inc., hereinafter referred to as plaintiff and in the neuter singular, complaining of Rufus W. Fontenot, individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, hereinafter called defendant, and for cause of action shows to the Court as follows:

1.

Plaintiff is a corporation organized under the laws of the State of Louisiana, with its principal office and domicile at Lake Charles, in Calcasieu Parish, Louisiana. The defendant is a citizen of the State of Louisiana, residing at New Orleans, Louisiana, and is the duly appointed, commissioned, qualified and Acting United States Collector of Internal Revenue for the State of Louisiana.

2.

The grounds of jurisdiction of this Court in this case are that this is a suit arising under the Constitution of the United States and the laws of the United States, in of the United States and the laws of the United States, in which the matters in controversy exceed Three Thousand Dollars ($3,000.00), and this suit is also one in which an injunction is sought against an official of the United States to prevent him from unlawfully collecting processing taxes levied by the United States pursuant to certain acts of Congress, more fully set out hereinafter, and to have declared invalid and unconstitutional said acts of Congress in so far as they attempt to provide for the levy, assessment and collection of said processing tax.

3.

Plaintiff is engaged in the business of milling rice and owns and operates a rice mill at Lake Charles, Louisiana. The milling of said rice, which constitutes processing of said rice under the terms of the Agricultural Adjustment Act, hereinafter referred to, is done wholly within said State and is a matter of intrastate commerce exclusively, being performed in its entirety within the limits of said State wherein plaintiff's rice mill is established and operated.

4.

There was adopted by the 73rd Congress and approved on May 12, 1933, an Act, P. L. No. 10, popularly known as the "Agricultural Adjustment Act," but officially entitled:

"An Act to relieve the existing national Economic emergency by increasing agricultural purchasing power,

to raise revenue for extraordinary expenses incurred by reason of the emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint stock land banks, and for other purposes."

and said Act with its amendments, for convenience hereinafter, will be referred to by its popular title, namely, the Agricultural Adjustment Act.

Said Agricultural Adjustment Act has been amended several times and particularly by an amendment approved August 24, 1935, which amendment is hereinafter referred to as the Amendment of August 24, 1935.

5.

The policy to be effectuated by the enactment of said Act, prior to the Amendment of August 24, 1935, was declared by Congress in Section 2 to be as follows:

"It is hereby declared to be the policy of Congress—

(1) To establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. The base period in the case of all agricultural commodities except tobacco shall be the prewar period, August 1909-July 1914. In the case of tobacco, the base period shall be the postwar period, August 1919-July 1929.

(2) To approach such equality of purchasing power by gradual correction of the present inequalities there-

in at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets.

(3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the prewar period, August 1909-July 1914."

By said Amendment of August 24, 1935, Subsection (1) of said Section 2 was amended by inserting at the beginning thereof the words

"Through the exercise of the powers conferred upon the Secretary of Agriculture under this title."

and Subsections (2) and (3) were stricken out and the following inserted in lieu thereof:

"(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section."

Plaintiff alleges that under no provision of the Constitution of the United States is the Congress of the United States authorized to provide for said processing taxes for the purpose of accomplishing any of

said policies above set forth, and the levy, assessment and collection of said taxes have been provided for in said Act, not for the purpose of raising revenue, but for the purpose of accomplishing the things set out in said declaration of policy of Congress and for said reasons the levy, assessment and collection of said taxes are wholly illegal, unlawful and unwarranted under the Constitution of the United States.

6.

Section 8 of said Agricultural Adjustment Act provides in substance that, in order to effectuate the declared policy of the Act, the Secretary of Agriculture shall have power to provide for a reduction and adjustment in the acreage and production for market, or both, of any basic agricultural commodity, including rice, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith, in such amounts as the Secretary finds best calculated to effectuate the declared policy of the Act, to be paid out of the moneys hereinafter referred to.

Section 9(a) of said Agricultural Adjustment Act levies the processing taxes thereinafter provided. It then provides that when the Secretary of Agriculture determines that any one or more payments (including said rental or benefit payments) authorized to be made under Section 8 of said Act or to be made with respect to any basic agricultural commodity, he shall proclaim such determination and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation. Said Act, however, provided that with respect to rice the processing tax for the period from April 1, 1935, to July 31, 1936, should be at the rate of 1c

per pound of rough rice. Under a similar provision of said Act before being amended by the Amendment of August 24, 1935, the Secretary was directed to proclaim, and did proclaim, before April 1, 1935, that rental or benefit payments would be made with respect to rice and the processing tax of 1c per pound of rough rice would be in effect on and after April 1, 1935.

Section 9(b) of said Agricultural Adjustment Act provides that the processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, as those terms are defined in the Act, plus such percentage of such difference, not to exceed 20 per centum, as the Secretary may determine will result in the collection in any marketing year of an amount of tax equal to (A) the amount of credits or refunds which he estimates will be allowed during such period with respect to the commodity and (B) the amount of the tax which he estimates would have been collected during such period upon all processings of such commodity exempt from tax because such processings are done by or for a State or a political subdivision or an institution thereof, except that the processing tax on rice for the period above mentioned should be at the rate of 1c per pound of rough rice.

Section 12(a) of said Act, prior to the Amendment of August 24, 1935, appropriated the sum of $100,000,000.00 to be available to the Secretary of Agriculture for administrative expenses under Title 1 of said Act and for rental and benefit payments made with respect to reduction in acreage or reduction in production for market under Part 2 of said Title 1. Section 12(a) of said Act, after said amendment, appropriated the said sum of $100,000,000.00 to the Secretary for administrative expenses under Title 1

and for payments authorized to be made under Section 8, including said rental and benefit payments made with respect to adjustment and reduction in acreage or production for market of basic agricultural commodities, including rice.

Section 12(b) of said Act, prior to said Amendment of August 24, 1935, provided that, in addition to said $100,000,000.00, the proceeds derived from all processing taxes imposed under said Title 1 were appropriated to be available to the Secretary of Agriculture for expansion of markets and removal of surplus agricultural products and administrative expenses, rental and benefit payments, and refunds on taxes. Section 12 (b) of said Act as amended by said Amendment of August 24, 1935, provided that, in addition to said $100,000,000.00 a further sum was appropriated to be available to the Secretary of Agriculture for payments authorized to be made under said Section 8, including said rental and benefit payments, said sum so appropriated to be equal to the proceeds derived from all processing taxes imposed under said Act.

7.

Acting pursuant to the purported authority given to him under said Agricultural Adjustment Act, the Secretary of Agriculture under date of April 18, 1935, through R. G. Tugwell, the then acting Secretary of Agriculture, promulgated certain rulings relating to the 1935 Southern Rice Production Adjustment Program, a copy of which rulings is attached hereto as Exhibit A and made a part hereof as if fully copied herein at this point. Under said rulings the Secretary of Agriculture allotted acreage to be planted in rice and barrels of rice to be produced, (a barrel being defined as being one hundred sixty-two pounds of rough rice)

in the States of Arkansas, Louisiana and Texas as follows:

	Acres.	Barrels.
Arkansas	135,000	1,834,722
Louisiana	364,500	3,898,333
Texas	142,500	2,010,833

Said rulings provided for a State Committee appointed by the Secretary of Agriculture for each State and for various forms and applications to be filled out by those desiring to produce rice and to be filed with the said State Committee. Said rulings provided that the base period for Texas should be the years 1931 to 1933, inclusive, and for Arkansas and Louisiana should be the years 1929 to 1933, inclusive. Said rulings further provided that the said State Committee should make an allotment to a producer applying to the Secretary of Agriculture through said State Committee for permission to grow rice during the year 1935, by taking the average acreage planted by such producer during the base period applicable to him and by reducing this result by 20% in Arkansas and in Louisiana and by 22% in Texas; and should give an allotment or permission to said producer to plant said 80% (in the case of Arkansas and Louisiana) or 78% (in the case of Texas) of the average acreage planted by him during said base period. Said rulings further provided for said State Committee to allot to each such producer a quota of barrels of rice that he might produce during the year 1935 by allotting to him 80% (if in Arkansas or Louisiana) or 78% (if in Texas) of the average number of barrels of rice raised by him during said base period.

If a producer had produced rice during any of the years constituting his base period, he was eligible to obtain an allotment and a quota from said State Committee, and if he should obtain such allotment and

quota, he was then eligible to execute a contract with the Secretary of Agriculture in the form shown by Exhibit B attached hereto and made a part hereof for all purposes as if copied in full at this point. If said producer executed said contract and it was accepted by the Secretary, he was then eligible for the benefit payments to be made by the Secretary as provided for in said agreement. However, if a producer had not produced rice during any of the years constituting his base period, he was not eligible to execute said contract with the Secretary and was not eligible for the benefit payments provided for therein. Likewise, if a producer did not execute such contract, or if he executed such contract and it was not accepted by the Secretary, he was not eligible for the benefit payments as provided for therein.

Plaintiff alleges that said processing taxes were not levied under the taxing power of the United States and for the purpose of raising revenue, but were levied for the purpose of raising money with which the Secretary of Agriculture could make rental or benefit payments to producers of agricultural products, including rice, and for the purpose of controlling, regulating, and reducing the amount of acreage that would be planted to rice and the amount of rice that would be grown, and to accomplish the purposes set out in Section 2 of said Act, and that the Congress of the United States had no authority under the Constitution of the United States to levy said processing taxes for said purpose and for said objects.

8.

Section 8 further provides that, in order to effectuate the declared policy of the Act, the Secretary is empowered to provide for a reduction in acreage or a reduction in production of any

basic agricultural commodity through agreements with producers, and to provide for rental or benefit payments in connection therewith in such amounts as the Secretary deems fair and reasonable, but there is no standard or measure established or provided in said Act by which the said Secretary shall be guided in providing for said reduction in acreage or production or in the amount of the rental or benefit payments, and said provisions are wholly invalid and violative of Article 1 of the Constitution of the United States which vests all of the legislative power in the Congress of the United States and is an invalid and unconstitutional delegation of legislative power by Congress to the Secretary of Agriculture.

Plaintiff further alleges that the Secretary has made no findings whatsoever, and if he has made any such findings, they are wholly insufficient to support his action in providing said method of reduction of acreage and production of rice as above set forth, and his said regulations and provisions concerning said reduction of acreage and reduction of production and amounts of benefit payments are wholly arbitrary and unsupported by any findings, or at least any sufficient findings, by the Secretary of Agriculture and are not authorized by said Act or the Constitution of the United States.

9.

Section 9(b) of said Act provides that if the Secretary of Agriculture has reason to believe that the processing tax levied on any commodity will cause such reduction in the quantity of such production domestically consumed as to result in the accumulation of surplus stock thereof or in the depreciation of the farm price of the commodity, then he shall cause an investigation to be made on due notice and opportunity for hearing to interested parties, and if thereupon the

Secretary finds that such result will occur, then the processing tax on such commodity shall be at such rate as will prevent such accumulation of surplus stock and depreciation of said farm price. Said provision applies to the processing tax levied upon rice. Said provision sets no proper standard by which the Secretary shall be guided in determining the rate of the processing tax on rice or how long said tax of one cent (1c) per pound shall remain on rice, and the continuation of said processing tax being dependent upon said action by the Secretary, said provision is an unconstitutional delegation of legislative power to the Secretary of Agriculture in violation of Article 1 of said Constitution vesting the legislative power in the Congress, and for said reasons the said Act in levying said processing tax is void and illegal.

10.

In addition to the foregoing reasons, the said Agricultural Adjustment Act and its provisions for the levying, assessment and collection of said processing taxes upon rice processed by this plaintiff are void, illegal and in violation of the Constitution of the United States for the following reasons:

1. They are an attempt and effort by the United States to regulate, control and reduce the production of certain agricultural commodities specified in said Act, including rice. The so-called processing taxes imposed by said Act are an integral part of the scheme, attempt and effort of regulating, controlling and reducing the production of such commodities, which attempt, effort and scheme is not within the scope of any of the powers vested in the Congress by the Constitution, and if said power exists as a governmental function, it is therefore within the powers reserved to the States as expressly provided by the Tenth Amendment to the Constitution.

2. The so-called processing taxes were not imposed under or in conformity with the power vested in the Congress by Section 8 of Article 1 of the Constitution to levy and collect taxes, duties, imposts and excises, in that they are not imposed to pay the debts or to provide for the common defense or the general welfare of the United States, but were imposed for the benefit of a particular class of individuals, namely, the producers of the various agricultural commodities specified in said Act who conform to the conditions laid down in said Act.

3. The said Act and provisions for the levy, assessment and collection of said processing taxes violates the provisions of the Fifth Amendment to the Constitution since the so-called processing taxes constitute the deprivation of the property of one class of citizens, including the plaintiff, namely, processors of said specified commodities, including rice, without due process of law, in that such processing taxes constitute the taking of the property of this class of citizens, including the plaintiff, not for a public purpose but for a private purpose, to-wit, the payment of gratuities or bounties or benefit payments to another class of persons, namely, the producers of the designated agricultural commodities, including rice, and particularly since this taking is without just compensation to the plaintiff and said processors.

4. Said so-called processing taxes levied by the Act are taxes in name only and not in fact. They constitute merely an exactment and imposition by the Government for the purpose, not of raising revenue for the support of the government, but of raising the price for farm products and adjusting farm income and for carrying out the policy of said Act as hereinabove set forth and for the purpose of enabling the government to carry out and effectuate the said attempt, effort and scheme of the United States as hereinabove set out.

5. Under the terms of Article 1, Section 1, of the Constitution of the United States, the legislative powers granted to the Federal Government are vested in the Congress; whereas, the said Act purports to vest powers in the Secretary of Agriculture, who alone is to determine, at his own discretion and without any definite standard fixed by Congress, the method of bringing about a reduction or adjustment in acreage and production of agricultural commodities, including rice; to provide for rental or benefit payments in connection therewith in such amounts as the Secretary may deem fair and reasonable; to determine how long the said tax of 1c per pound upon the processing of rice shall remain in effect, and if the Secretary changes said rate, what rate shall be fixed. In said respects the said Act involves an invalid delegation to the Secretary of Agriculture by Congress of powers vested exclusively in it by the Constitution and because of said things the said Act delegates said legislative powers to the Secretary of Agriculture and said powers are conferred exclusively on Congress by said Article 1, Section 1; Article 1, Section 8, clause 18; Article 11, Section 1; Article 1, Section 7, clause 1; and Article 1, Section 9, clause 7 of the Constitution.

6. The said taxes if construed as direct, violate Article 1, Section 9, clause 4, and Article 1, Section 2, clause 3 of the Constitution, because not apportioned according to population.

7. The said taxes are not excise taxes, and are not uniform throughout the United States as required by Article 1, Section 8, clause 1.

8. The said alleged taxes cannot be levied under Article 1, Section 8, clause 3, regulating commerce, because neither the production nor processing of commodities, including the processing of rice done by plaintiff, is in interstate commerce and cannot be regulated

by Congress and in so far as this plaintiff is concerned, its processing of said rice is not interstate commerce and cannot be regulated by Congress.

11.

Under the terms of said Act and orders of the Secretary of Agriculture and the Secretary of the Treasury, the plaintiff is required to file returns with the defendant on or before the 30th day of October, 1935, showing the amount of rice processed by the plaintiff during the month of September, 1935, and the amount of said so-called processing tax on account of said rice processed by the plaintiff during said month, and plaintiff is required to pay said amount to the defendant on or before October 30, 1935. The amount of said processing taxes on account of the rice processed by the plaintiff during said month of September is $17,331.90. The defendant as said Collector of Internal Revenue is charged with the duty of collecting said tax, and if the plaintiff does not make said payment on or before October 30, 1935, the said defendant will assess said tax against the plaintiff and will serve upon the plaintiff notice and demand for the payment of said tax, and the plaintiff will be allowed ten days from the receipt of such notice and demand within which to pay said tax. In the event of failure to pay said tax within said time, the defendant will assess against the plaintiff a penalty equal to 5 per centum of the amount of the tax and interest on the tax at the rate of 1 per centum from the due date of the tax until it is paid; if plaintiff fails to pay said tax within the ten days after receipt of said notice and demand, the defendant will proceed to collect the tax, penalty and interest by filing a notice of lien upon all of plaintiff's property, and by distraining upon and selling such of plaintiff's property as may be necessary in order to realize the amount of said tax, penalties and interest. Additional processing taxes for the months sub-

sequent to September, 1935, will accrue and will be assessed against and collected from plaintiff, just as the processing tax for the month of September will be, in the manner described, unless the defendant is restrained and enjoined from assessing and collecting said taxes. Plaintiff has its rice mill at the place stated in paragraph 3 hereof with a large inventory of rough rice and clean rice, bank accounts and cash on hand. Repeated levies upon and distraint of its property from month to month will cause plaintiff irreparable injury and damage, in that such levies and distraints will impair the valuable good-will of its business; will seriously interfere with, if not prevent, the actual operations of its plant and the sales of its product; and will result in a permanent injury to its business and good-will. Furthermore the tax, if once paid by plaintiff, will be irretrievably lost to plaintiff, to its great and irreparable injury.

12.

Plaintiff further shows that by the Amendment of August 24, 1935, Section 30, of said amendment added a new section to the Agricultural Adjustment Act designated as Section 21, a copy of which Section 21 is attached hereto and marked Exhibit C. Plaintiff does not have an adequate and complete remedy at law as to taxes levied and assessed under said Act because of the provisions of Section 21(d) of said Agricultural Adjustment Act. Under Section 21(d) a recovery will not be allowed to the plaintiff for any amount of the tax paid by plaintiff unless it shall be established that the plaintiff has not directly or indirectly included such amount in the price of the rice with respect to which it was imposed or passed on any part of any such amount to the vendee, or included any part of such amount in the charge or fee for processing, and that the price paid by the plaintiff for rough rice was not reduced by any part of such amount.

Plaintiff states that it is an impossibility to prove or attempt to prove what portion, if any, of the processing taxes paid by it has been either deducted from the purchase price of rough rice or added to the selling price of clean rice for the following reasons:

Rice millers buy rough rice at the market price, a price that is established by the competitive bidding of the many rice millers. Rough rice is bought in large quantities and kept on an average of several months before the clean rice made from it is sold, and because of said facts the miller has no way of definitely knowing at the time of the purchase of rough rice whether he will make a profit or loss on the milling and selling of rice. A major factor in determining the market price of rough rice is the market price of clean rice at the time the rough rice is bought but there is no assurance, however, that the market price for clean rice will be the same at the time the miller actually sells the clean rice milled from the rough rice.

The miller who buys rough rice must pay the market price as established under these conditions, and has no power to fix or make the market price himself. Having no power to make prices, he cannot arbitrarily depress the market price of rice in order to pass the processing tax back to the producer.

Likewise, the miller sells the clean rice in competition with many other rice millers, and also in competition with many other food products, such as wheat, potatoes, beans and other food products, that can be substituted for rice. Under such circumstances, if the price of clean rice is pushed too high, consumers will shift to other products with the result that the demand for rice will decline until the price of rice falls to where people will buy it instead of other competitive commodities. Under these circumstances the rice miller cannot fix or make

the price for clean rice, and cannot arbitrarily increase the price of clean rice in order to pass the processing tax on to the purchaser of clean rice.

In addition, rough rice when milled produces many grades of rice and products thereof. It produces extra fancy head rice, fancy head rice, head rice, second head rice, screenings, brewers, polish, bran, and hulls, all of which commodities have varying values, extra fancy rice being the most valuable and the other grades being of less value in the order above set forth. Extra fancy, fancy, head and second head rice are generally sold for human consumption as rice. Screenings are sold to some extent for direct consumption by human beings. Brewers and screenings are a very low priced commodity and are used in general by breweries. Polish, bran and hulls are sold generally for stock feed. Some of such products, particularly brewers, polish, bran and hulls are sold practically always for a less price per pound than is paid for the rough rice per pound. There is no definite proportion by which the price paid for rough rice can be allocated in any way to these different grades of rice, so that it is impossible to tell with any degree of accuracy how much the rice and rice products that have been produced from any particular lot of rough rice have cost, making it impossible to tell what amount of the processing tax, if any, has been passed on to the purchaser of these articles.

Furthermore, the processing tax is levied upon the first processing of the rough rice and must be paid by the end of the calendar month following the month in which the processing occurred. On the other hand, when a lot of rough rice has been processed in any month, some of the grades may be sold immediately, whereas some of the other grades produced from said rice may be kept for several months before being sold, and it is thus impossible to tell how much has been

received for the clean rice and its products that are produced from any month's processing, and it is impossible to tell how much, if any, of said processing tax has been passed on to the purchaser of said clean rice.

Indeed, it is impossible even to determine whether, for any given month, the mill operations have resulted in a gain or loss and it is only at the end of the season that a gain or loss *for the season* can be determined.

In addition, in the cost of rough rice processed during any month, there is an additional item of the cost of the milling of such rice. The cost of milling rice depends upon many factors so that it is impossible to determine what has actually been the cost of milling any particular lot of rice. There are many varieties of rice, some of which have longer grains than others. Different processes of milling must be used for each different kind and variety of rice, and where the plaintiff and other millers have on hand varied and sundry varieties and kinds of rice it is necessary in the operation of the mill to change quickly from one kind of rice to another as the milling of one lot of rice is completed and the milling of another kind begun. In addition, lots of rice of the same variety will vary the one from the other due to the varying amounts of moisture in the rice, varying conditions under which the rice was harvested, and many other factors, which makes it necessary to vary the operation of the rice mill in many respects as between lots of rice. In addition, the output of a mill in barrels per day varies because of all these factors very considerably. Under all the circumstances, it is impossible for a mill to determine the cost to it of the milling of any particular lot of rice, which cost must necessarily enter into a deter-

mination of whether in selling the clean rice it has included any part, or what part, of the processing tax in the price for which it sells its clean rice and rice products.

In addition, owing to the peculiar nature of the rice business and the customary manner of selling rice that prevails in the rice industry, it is impossible for the plaintiff and other rice millers to determine the cost of any particular rice that has gone into the clean rice that is covered by any particular sale. The clean rice that is obtained from any particular lot of rough rice is not sold in the trade by itself alone. At the beginning of the season plaintiff and other rice mills know approximately the different kinds of rice that they will have during the season. In the early part of the season and as the season progresses, plaintiff and other millers make up samples of rice of the kind that they have determined they will be able to supply during the season. Owing to the varied character of clean rice out-turn from rough rice, these samples are made up of mixtures of different kinds of rice. It has been found impossible to make up such samples entirely of one kind of rice from one lot of rough rice as it is impossible to match in any appreciable quantity a sample of one lot of clean rice with another lot of clean rice. Clean rice is sold on these samples and when an order is obtained for a given amount of clean rice of a certain sample, the plaintiff and other rice millers then find what different lots of clean rice they have on hand which by mixing will produce the samples upon which the sale has been made. As a result, when a sale of clean rice is made, the order is filled by a mixture of clean rice which is made up from many different lots of clean rice. These different lots of clean rice have been milled from different lots of rough rice for which different prices have been paid. As a result the rice that goes into a clean

rice sale has come from many different sources and has been milled under many different conditions and it is impossible to tell exactly the cost of such clean rice under the circumstances. In addition, part of the clean rice obtained from a lot of rough rice may be carried for many months and mixed on different sales with innumerable combinations of other lots of clean rice so that it is impossible to trace through the history of rice processed during any month to determine what price was obtained for it, whether it was sold at a profit or a loss, and what part, if any, of the processing tax has been passed on to the purchaser.

Furthermore, there is no way in which the cost of a lot of rough rice can be allocated between the various grades of rice and the various rice products produced from such lot except by speculation for the use of arbitraries.

In short, it is impossible to determine, statistically or otherwise, where the ultimate burden of the processing tax falls—how much of it is paid by the consumer, how much by the producer, or how much by the processor.

In view of the above facts, the purported remedy given by Section 21(d) of said Agricultural Adjustment Act is wholly inadequate and is in fact a statutory denial of any legal remedy at all.

13.

In addition, the conditions imposed upon the right of the plaintiff to recover taxes paid by it must, under Section 21(d) be established to the satisfaction of the Commissioner of Internal Revenue, and no provision is made for judicial review. The transcript of the hearing before the Commissioner of Internal

Revenue is the sole record of the case on appeal to the Courts. The effect of such section is therefore to limit the function of the judicial review to the determination of whether there was any evidence submitted to the Commissioner of Internal Revenue tending to support the findings of the Commission. Said Section 21(d) therefore deprives the plaintiff of its property without due process of law in violation of the Fifth Amendment to the Constitution.

14.

Under said Section 21(d) of said Agricultural Adjustment Act, if the processing tax has been either passed on or passed back by the plaintiff, then the plaintiff cannot maintain any action to recover the tax, if it is ultimately determined to be invalid, either for its own account or for the account of the persons to whom the processing tax has been thus passed on or passed back by the plaintiff; nor can the persons to whom the processing tax has been thus passed on or passed back maintain such an action on their own account, but all right of action by anyone to recover the tax, if it has been passed on or passed back, has been wholly taken away by said amendments to said Agricultural Adjustment Act. Moreover, Section 21(a) of said Act and Section 405 of the Revenue Act of 1935 deprive the Courts of power to render declaratory judgments with respect to such alleged taxes. By reason of the impossibilities of proof hereinabove referred to, the practical effect of said Act will be to deny taxpayers and the plaintiff all means of securing a judicial decision as to the constitutionality of the processing taxes, unless the Court grants the relief herein sought.

15.

Plaintiff further shows that by Section 30 of said Amendment of August 24, 1935, Section 21(a) was

added to said Act, which in substance provides that no suit to enjoin the collection of any tax imposed by said Act shall be maintained. Plaintiff alleges that said section is not intended to apply, and does not apply, to the injunction prayed for by this plaintiff inasmuch as plaintiff has no adequate remedy at law. Plaintiff alleges, however, that if said section should be interpreted as providing that no injunction should be granted to the plaintiff as prayed for in this cause, then the said section, together with the other provisions of said Act, is invalid and in violation of the Fifth Amendment to the Constitution of the United States, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes will be collected from the plaintiff and the plaintiff will have no remedy to prevent the collection of said unlawful taxes, and will be forever deprived of the right in any manner to test the constitutionality of such taxes.

16.

Said Section 21(d) further denies to the plaintiff a complete and adequate remedy at law, because a multiplicity of claims and suits would be required to enforce such rights as are granted thereunder and because said subsection requires that the facts required to be proved thereunder be established to the satisfaction of the Commissioner of Internal Revenue and makes no provision for a judicial review of his decision.

17.

A refund of processing taxes paid by the plaintiff could not actually be obtained even if it were possible for the plaintiff to prove the negative facts required by subsection (d) of Article 21, because Congress has

not appropriated funds for the payment of such refunds and plaintiff believes, that in view of the aggregate amount involved, there is a reasonable doubt whether such appropriation would ever be made.

18.

Plaintiff is ready, able and willing and hereby offers and agrees that in the event the injunctive relief herein prayed for is granted, it will deposit at such time and in such manner as this Court shall direct the said sums claimed to be due from plaintiff for processing taxes on account of the rice processed by plaintiff during the month of September, 1935, and the plaintiff further offers and agrees that at the end of each month hereafter it will file processing tax returns with the defendant as required by existing laws and regulations and that as and when processing taxes under said returns become due and payable according to existing laws and regulations or any extension lawfully granted to the plaintiff, it will deposit the amount of such taxes in such manner as the Court may direct, all such deposits to abide the final decree in this cause.

Wherefore, plaintiff—being without an adequate remedy at law prays:

1. That process issue and be served upon the defendant requiring him to appear and answer this bill, but not under oath, and answer under oath being hereby expressly waived;

2. That pending the hearing of the application for a preliminary injunction hereinafter prayed for, a temporary restraining order issue immediately enjoining and restraining the defendant until the hearing of its application for a preliminary injunction or until

the further order of this Court, from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in Court or otherwise, any processing taxes under and pursuant to said Agricultural Adjustment Act and any interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

3. That notice issue to the defendant advising him that plaintiff is hereby applying for a preliminary injunction and that plaintiff's said application will be heard at a time to be fixed by the Court in said notice, and that upon said hearing a preliminary injunction pending the final disposition of this case be issued enjoining and restraining the defendant from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in Court or otherwise, any processing taxes under and pursuant to said Agricultural Adjustment Act and any interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

4. That at the final hearing of this cause said preliminary injunction shall not have been granted, then that a permanent injunction be granted permanently restraining and enjoining the defendant from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in Court or otherwise, any processing taxes under and pursuant to said Agricultural Adjustment Act and any

interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

5. That at the final hearing it be adjudicated that the provisions of said Agricultural Adjustment Act providing for the levying, assessing and collecting of said processing taxes against and from the plaintiff are invalid, unlawful and unconstitutional on each and every one of the grounds upon which they are hereinabove alleged to be unlawful, invalid and unconstitutional; and that the defendant has no lawful right to attempt in any manner to collect said processing taxes from the plaintiff or any of the penalties or interest thereon purported to be provided for in said Agricultural Adjustment Act;

6. And plaintiff prays for such other and further relief, both general and special, to which it may be justly entitled.

(Sgd.) NOBLE-TROTTER RICE MILLING CO., INC.,
By J. HOWARD TROTTER,
Secy.-Treas. & Manager.
(Sgd.) McCOY, KING & JONES,
By C. A. McCOY,
Attorneys for Plaintiff.

State of Louisiana,
Parish of Calcasieu.

Before me, the undersigned authority on this day personally appeared J. Howard Trotter, who having been by me first duly sworn, stated on oath that he is the Manager of Noble-Trotter Rice Milling Co., Inc., a corporation, plaintiff in the above cause, and that he has been duly authorized by said corporation to

make this affidavit for and in its behalf; that he has read the foregoing and above bill and knows the contents thereof and that the facts therein set out are true, except as to such facts as are therein stated on information and belief, and that as to those facts so stated to be on information and belief, he believes them to be true.

(Signed) J. HOWARD TROTTER,
Secy-Treas. & Mgr.

Subscribed and Sworn to before me, this 25th day of October, 1935.

(Signed) RUBY RAINS,
Notary Public in and for
(Seal) Calcasieu Parish, La.

EXHIBIT "A."

Filed October 25, 1935.

Issued April 18, 1935.

United States Department of Agriculture,
Agricultural Adjustment Administration.

Administrative Rulings Relating to the 1935 Southern Rice Production Adjustment Program.

Explanation.

These Administrative Rulings apply to and are part of the Southern Rice Production Adjustment Contract and documents pertaining thereto.

If any of the provisions are not understood, the Community or County Committee should be consulted. No producer should make out and submit to his Community or County Committee an Application or a Contract or other documents pertaining thereto with-

out knowing exactly what he must do in order to receive the benefits of the program.

I. Definitions.—As used in the Southern Rice Production Adjustment Application, Declaration, Contract, Schedule, and these Administrative Rulings:

(a) "Person," "tenant," "landlord," "producer," and "well or canal operator," include individuals, copartnerships, and corporations; and where it is required by the context, the singular shall include the plural.

(b) "Farm" means one contiguous tract of land operated as one unit substantially separate from any other such tract of land.

(c) "Producer" includes persons owning and operating their own farms; tenants operating farms rented for cash; tenants operating farms under a crop-share lease, contract, or agreement; landlords leasing to share tenants; corporations, copartnerships, or individuals furnishing water for production of rice on a share basis; and such other persons or classes of persons as the Secretary may determine to be eligible to sign Southern Rice Production Adjustment Contracts.

(d) "Participation in the production of rice" means sharing as a producer in any manner in the production of rice on a farm.

(e) "Farming Operation" means the production of rice or the participation in the production of rice by a producer.

(f) "Application" means any Application for Rice Acreage Allotment (forms Rice 1 and 2) heretofore or hereafter executed by any producer. "Application

serial number" means the serial number of any such Application.

(g) "Declaration" means any 1935 Southern Rice Declaration of Farm Acreage (form Rice 30) heretofore or hereafter executed by any producer. The "farm serial number" means the serial number of any such Declaration.

(h) "Schedule" means any Producer's Schedule of Rice Acreage (Form Rice-37) heretofore or hereafter executed by any producer. Each such Schedule shall bear the same serial number as the Contract executed by the producer who executes the Schedule.

(i) "Contract" means any 1935 Southern Rice Production Adjustment Contract (Form Rice-36) heretofore or hereafter executed by any producer. The "Contract serial number" means the serial number of any such Contract.

(j) "1935" means the period from January 1, 1935, to December 31, 1935.

(k) "1934" means the period from January 1, 1934 to December 31, 1934.

(l) The term "State base period" means the period of calendar years 1929 to 1933, inclusive.

(m) The "State Allotment" shall be 135,000 acres for Arkansas, 364,500 acres for Louisiana, and 142,500 acres for Texas. The "State Quota" shall be 1,834,722 barrels for Arkansas, 3,898,333 barrels for Louisiana, and 2,010,833 barrels for Texas.

(n) The term "base period" in Arkansas and Louisiana means the period of the calendar years

1929 to 1933, inclusive, and in Texas the years 1931 to 1933, inclusive.

(o) The "production history" of a producer means, as the context may require, the producer's rice acreage or rice production, or both, for the base period as adjusted to the official figures and accepted by the State Committee.

(p) The "producer's Allotment" and the "producer's Quota" means respectively the rice acreage and the rice production assigned by the State Committee, acting for and on behalf of the Secretary, to the producer for 1935 and determined according to the procedure set forth in Administrative Ruling II hereof.

(q) The "acreage allocated" by the producer means that part of a producer's allotment which, in a Declaration, he allocates to a given farm as a basis for determining his share of the total rice acreage planted on that farm in 1935.

(r) "Producer's share of the rice acreage planted" and the "Producer's share of the acreage planted to rice in 1935" each means with respect to any farm, that acreage which bears the same ratio to the total rice acreage planted on that farm in 1935 (as determined upon checking compliance with the Contract in the manner prescribed by the Secretary) that the acreage allocated by the producer to that farm in a Declaration bears to the total rice acreage allocated to that farm in such Declaration.

(s) The "Secretary" means the Secretary of Agriculture of the United States.

(t) "Rice Section" means the Rice Section of the Agricultural Adjustment Administration.

(u) "Official figures" means the records of acreage and production prepared by the United States Department of Agriculture.

(v) A "barrel" means 162 pounds of rough rice.

(w) A "bushel" means 45 pounds of rough rice.

II. Determination of Allotments and Quotas.—1. The allotment of a producer shall be determined by each State Committee as follows: (a) Add the acreage of rice planted annually by each producer for his own account during the base period, after adjustment of acreage of all producers to the official figures for each state for each of the years of the base period; (b) Divide the total thus secured by five (5) in Louisiana and in Arkansas, and the total thus secured by three (3) in Texas; (c) Reduce the result obtained by 20 per cent in Louisiana and in Arkansas and the result obtained by 22 percent in Texas.

The total allotments assigned to producers in each state shall not in any event exceed the state allotment for that state.

2 The quota of a producer shall be determined by each State Committee as follows: (a) Add the number of barrels of rough rice produced annually by each producer for his own account during the base period, after adjustment of the production of all producers to official figures for each state for each of the years of the base period; (b) Divide the total thus secured by five (5) in Louisiana and in Arkansas, and the total thus secured by three (3) in Texas; (c) Reduce the result obtained by 20 percent in Louisiana and in Arkansas and the result obtained by 22 percent in Texas.

The total quotas assigned to producers in each state shall not in any event exceed the state quota for that state.

3. If the total of allotments and quotas determined according to the provisions of sections 1 and 2 of this numbered ruling, in any state, is less than the State Allotment and State Quota such excess may be allocated to producers by the State Committee, subject to approval by the Secretary or his authorized agent.

4. The Allotment and Quota are based upon the personal production history of the producer, regardless of where the rice was produced and are the measure of such history. The producer's production history shall not be transferred except as the State Committee shall, in writing, approve transfers made pursuant to the provisions of subsections a, b, and c of this numbered paragraph 4 of Administrative Ruling II. All requests for transfer of production history shall be in writing, signed by, or on behalf of the producer by his duly authorized agent, and approval thereof shall be in writing signed by at least two members of the State Committee. In no event shall the State Committee approve the transfer of production history by reason of foreclosure, execution or any forced sale.

(a). If a producer has died or has been declared legally incompetent by a Court of competent jurisdiction and has not executed, prior to the date of such death or incompetency, an Application for an allotment and quota, his records of production may be used by such heirs or devisees, or such member of the family of such deceased producer or by such members of the family of such incompetent producer as are continuing the farming operation of the deceased or incompetent producer, upon their furnishing proof of such relation-

ship and succession to the producer's farming operation.

(b) If a well or canal operator voluntarily sells his well or canal system and has not executed an application, his production history shall be transferred to such successor, provided that the former well or canal operator was not engaged in farming operations in 1934.

(c) If a partnership is dissolved before an application for an allotment and quota has been executed by or on behalf of the partnership, its records of rice production for the base period shall be divided among the partners in such proportions as is agreed upon by the partners or their authorized representatives in writing submitted to the State Committee.

5. In all figures representing final determination of individual allotments and quotas, fractions amounting to one-half a unit or less shall be dropped and fractions amounting to more than one-half a unit shall be considered a whole unit.

6. If a producer during the base period had operated in more than one state, he shall apply for an allotment and quota to the State Committee of each state in which he had farmed during the base period. Only the history earned by the producer in that state shall be presented to the State Committee in his Application. No producer shall be assigned Allotments and Quotas in two or more states, larger in the aggregate, than the Allotments and Quotas assignable to him in one state, had all of his farming operations been confined to that one state.

7. The sum of all Allotments and of all Quotas within a State shall not in any event exceed the State Allotment and Quota, respectively.

III. Transfer of Allotment and Quota.—The producer's Allotment and Quota shall not be transferred except as the State Committee shall in writing approve transfers made pursuant to the provisions of subsections a, b, c, and d of this Ruling III. In no event shall the State Committee approve the transfer of an Allotment or Quota by reason of foreclosure, execution, or any forced sale. All requests for transfer shall be made in writing signed by or on behalf of the producer by his duly authorized agent, and approval thereof shall be in writing signed by at least two members of the State Committee.

(a) If a producer dies or has been declared incompetent by a Court of competent jurisdiction after executing an Application but before executing a Contract, his allotment and quota may be transferred to such heirs, devisees, or such members of the family of such deceased producer or such members of the family of such incompetent producer as are continuing the farming operations of the deceased or incompetent producer, upon their furnishing proof of such relationship and succession to the producer's farming operation.

(b) If a producer voluntarily withdraws, either wholly or in part, from the production of rice after executing an Application but before executing a Contract, he may transfer all or part of his Allotment and Quota to such persons as are continuing his farming operation, upon proof of such withdrawal and succession.

(c) If a producer has become disabled and has retired from the production of rice after executing an Application but before executing a Contract, he may transfer all or part of his Allotment and Quota to such

person as is continuing his farming operations upon proof of such disability, retirement, and succession.

(d) Upon dissolution of a partnership, after an Application has been executed by or on behalf of the partnership, but before a Contract has been executed by or on behalf of the partnership, the Allotment and Quota shall be divided among the partners in such proportions as is agreed upon by the partners or their duly authorized representatives in writing submitted to the State Committee.

IV. Use of Allotment and Quotas by Well or Canal Operators.—If a well or canal operator has an allotment and quota assigned to him by the State Committee on the basis of his personal history as a furnisher of water on a crop share basis, such well or canal operator shall not change his status so as to use such allotment and quota in a capacity other than as a furnisher of water on a share crop basis.

V. Signing of Application, Declaration, Contracts, and Other Documents by a Person in a Representative Capacity.—

(1) In the event any document is to be executed on behalf of a Corporation, it shall be signed on behalf of the Corporation by an officer of the Corporation, who shall state his title, and affix the corporate seal to the Contract, (If the Corporation has no corporate seal, the following statement in writing shall appear over the signature, "No corporate seal required or adopted,") or by a representative of the corporation other than an officer, who has been authorized by the corporation to execute the contract by power of attorney, under seal, duly executed on behalf of the corporation on a prescribed form and filed with the Comptroller of the Agricultural Adjustment Administration at Washington, D. C., or

attached to the contract, which authorization shall be considered a part of the contract documents.

(2) In the event a document is to be signed by an executor, administrator, guardian of an incompetent person, receiver, or other person appointed by a Court in a fiduciary capacity, there shall be furnished either the original or a certified copy of the Court order of appointment or a certificate on a prescribed form showing that such person was duly appointed as such fiduciary and that the appointment is still in full force and effect.

(3) Where a document is signed by a manager or an agent for a producer, the original or a certified copy of a Power of Attorney, on a prescribed form, authorizing the manager or agent so to sign shall be furnished.

(4) If the producer is a Governmental body or agency, there shall be attached to the document a certified copy of a resolution of the Board or other authority authorized by statute to lease and contract in regard to the land and personal property covered by the contract, authorizing the execution of such document by the person executing the document on its behalf.

(5) When one producer has several documents to be signed by the same agent or attorney, a properly executed power of attorney may be filed with the Comptroller of the Agricultural Adjustment Administration to cover all such cases, and shall be considered as a part of each document so signed.

(6) A document to be signed for a partnership shall be executed in the name of the partnership and of each partner as an individual, by each member of

the partnership, or on behalf of each partner who does not personally sign, by an agent duly authorized to so sign by a Power of Attorney, on a prescribed form.

VI. Pledge of Adjustment Payments.—Adjustment payments may not be assigned under any condition. This is forbidden by the Contract, as well as prohibited by law.

However, the producer's right to adjustment payments under the Contract may be pledged in order to obtain funds (or credit) for carrying on the current operation of the farm. The expression "funds" (or credit) for carrying on the current operation of the farm and "current production credit" means funds or credit to meet any necessary expense of preparing of land, planting, cultivating, watering, harvesting, and marketing of the rice crop grown in the year 1935. Without in any way limiting the exclusiveness of the above definition, the expression shall not include cash rent or debts incurred in connection with the production of past crops.

No pledge of any producer's right to adjustment payments under his contract for any purpose other than to procure current production credit as defined above shall give rise to any obligation under the Contract upon any payee designated therein by the producer to distribute such payment, when and if accepted by such payee, to the person claiming to hold such a pledge not given for current production credit.

Dated April 18, 1935.

R. G. TUGWELL,
Acting Secretary of Agriculture.

EXHIBIT "B".

Filed Oct. 25, 1935.

Form Rice 36,
U. S. Department of Agriculture,
Agricultural Adjustment Administration,
Rice Section.
Form approved by Comptroller General, U. S.,
May 1, 1935.

1935 Southern Rice Production Adjustment Contract.

(Pursuant to and to effectuate the purposes of the Agricultural Adjustment Act, approved May 12, 1933, as amended, hereinafter referred to as the Act.)

I. Performance by Producer:

1. The undersigned producer (and each and all of them if more than one signs this instrument) hereby offer(s) to enter into a contract with the Secretary of Agriculture (hereinafter referred to as the "Secretary") upon the terms and conditions hereinafter set forth and subject to such regulations or administrative rulings (which shall be part of the terms and conditions of this contract) as have been heretofore or may hereafter be prescribed by the Secretary relating to 1935 Southern Rice Production Adjustment Contracts. This contract shall apply to every farm upon which the producer participates in any manner in the production of rice in 1935 (hereinafter referred to as "the farm(s) covered by this contract"). This offer shall become a binding contract upon its acceptance by the Secretary.

2. The producer,

(a) Represents that he has allocated to each farm upon which he will participate in any manner in the production of rice in 1935 some part of his allotment and that the total acreage allocated by the producer to all such farms does not exceed his allotment;

(b) Agrees that he will not share or participate in any manner in the production of rice in 1935 on any farm to which he has not allocated a portion of his allotment;

(c) Agrees that for the purposes of checking compliance and making payments under this contract "the producer's share of the acreage planted to rice in 1935" on each farm covered by this contract shall be that acreage actually planted to rice on such farm in 1935 which bears the same ratio to the total acreage planted to rice on such farm in 1935 that the acreage allocated by the producer to such farm bears to the total acreage allocated thereto by all persons participating in the production of rice thereon;

(d) Agrees that his total share of the acreage planted to rice in 1935 on all the farms covered by this contract shall not exceed his allotment;

(e) Agrees that the acreage permitted under this contract to be planted to rice in 1935 shall be farmed in a workmanlike manner throughout 1935;

(f) Applies for membership in the Rice Production Control Association organized pursuant to Form Rice 35 in each County or Parish in which a farm covered by this contract is located;

(g) Agrees to permit access by any authorized agent of the Secretary to the farm(s) covered by this contract, and to all fiscal books, records, and documents, regardless of where located, pertaining to the

production and/or sale of rice on or from any and all of such farms, and expressly waives any right to have such records kept confidential;

(h) Agrees not to sell, pledge, transfer, or assign, in whole or in part, this contract or his right to or claim for payments under this contract, and not to execute any power of attorney to collect such payments, and any sale, pledge or assignment, order or power of attorney shall be null and void, except that the producer may pledge or hypothecate his right to any adjustment payments under this contract for the purpose of obtaining funds (or credit) for carrying on the current operation of the farm(s) covered by this contract (hereinafter referred to as "current production credit") and such pledge or hypothecation shall operate to establish an interest or right on the part of the pledgee in and to said adjustment payments as against any other person or persons, but the pledge or hypothecation thereof shall not alter the provisions of paragraph 5 that all adjustment payment checks drawn in compliance with this contract shall be made payable to the payee therein stipulated. If the adjustment payments herein provided for shall have been pledged by the producer for current production credit, the producer, or if a payee is designated in paragraph 5 hereof and accepts such payment, then such payee if notified in writing of the pledge, shall receive the adjustment payment in trust to pay therefrom to the pledgee the amount of the obligation owing for current production credit secured by such pledge and to pay the balance of said payment to the producer. If a payee other than the producer is named in paragraph 5 hereof, and if such payee shall not have been notified of any pledge of the adjustment payments for current production credit made pursuant to the terms of this numbered paragraph, such payee shall receive such payments in trust to pay the whole amount

thereof to the producer, it being expressly understood and agreed that the Secretary shall have no duty or obligation to see that distribution is made in accordance with the foregoing provisions, but shall have the right to enforce the performance of said trust by the payee;

(i) Represents that the statements contained herein are true to the best of his information and belief. Without limitation of any other right or remedy of the Secretary conferred by law or this contract, a material misstatement herein or in any information furnished by the producer in connection with this contract or any noncompliance by the producer with any of the terms hereof, or with any applicable regulation or administrative ruling which has been or may hereafter be prescribed by the Secretary with reference to 1935 Southern Rice Production Adjustment Contracts shall be grounds for termination of this contract by the Secretary. The determination of the Secretary that any such misstatement or noncompliance has occurred shall be final and conclusive. In the event of termination of this contract by the Secretary, the producer shall return to the Secretary all payments theretofore made under this contract, together with all costs incident to the collection thereof.

II. Performance by Secretary:

3. Amount of Payments.—The Secretary shall, as a consideration for the performance by the producer of all the terms and conditions of this contract, and in the manner and at the times specified in paragraph 4 hereof, make

(1) A first adjustment payment at a rate of 81 cents per barrel of rice, and

(2) A second adjustment payment at a rate per barrel of rice, uniformly applicable to all such contracts, to be determined by the Secretary,

upon an amount of rice determined in the manner specified in sub-paragraph (a) or (b) of this numbered paragraph, whichever shall apply:

(a) If the producer's total share of the acreage planted to rice in 1935 on all the farm(s) covered by this contract is not more than 100 per cent nor less than 85 per cent of the producer's allotment, such payments shall be made upon that number of barrels of rice which equals 85 per cent of the producer's quota.

(b) If the producer's total share of the acreage planted to rice in 1935 on all the farm(s) covered by this contract is less than 85 per cent of the producer's allotment, such payments shall be made upon that number of barrels of rice which bears the same ratio to the producer's quota that the producer's total share of the acreage planted to rice in 1935 on all such farms bears to the producer's allotment.

4. Time of Payments.

(a) The first adjustment payment shall be made as soon as practicable after August 1, 1935, provided that proof satisfactory to the Secretary, of compliance with the terms and conditions of this contract, has been submitted to the Secretary or his authorized agent.

(b) The second adjustment payment shall be made as soon as practicable after December 1, 1935, provided that proof satisfactory to the Secretary, of compliance with the terms and conditions of this contract, has been submitted to the Secretary or his authorized agent.

5. (a) All adjustment payments hereunder are for the benefit of the producer and shall be made only to the producer unless the producer shall, by naming another person in this numbered paragraph, direct that such payments be made to the person so named, in which event the payments shall be made by check drawn payable to the person so named who shall receive them subject to the provisions of this contract, and particularly subject to the provisions of subparagraph (h) of paragraph 2 hereof. If the person so named shall have died or shall refuse to accept such payment, or shall for any reason be unable to receive and distribute such payment subject to the provisions of this contract then such payment shall be made to the producer, who likewise shall receive such payments subject to the provisions of this contract and particularly subject to the provisions of subparagraph (h) of paragraph 2 hereof.

(Stamp State and County code above.)

State..... Parish }.....
County }
Community..... Contract }
Serial No.}.....

5. (b) Designated payee ....., of.....
(Address of payee)

III. Signature(s) of Producer(s).

6. In Witness Whereof, each of the undersigned has hereunto set his hand on the date indicated opposite his signature.

...., 1935.
(Witness) (Date of Producer's signature)

....
(Signature of Producer) (Application No.)

Address of Producer (Rural Route No.) .... (Box No.) .... (Post Office) ..... (State) .....

...., 1935.
(Witness) (Date of Producer's signature)

....
(Signature of Producer) (Application No.)

Address of Producer (Rural Route No.) .... (Box No.) .... (Post Office) ..... (State) .....

IV. Certification of Committees.

We Hereby Certify that we have examined the foregoing offer and that, to the best of our information and belief, the total acreage allocated by the producer to all the farm(s) covered by this contract does not exceed the producer's allotment, and hereby recommend that the foregoing offer be accepted by the Secretary.

.....
(For Community Committee)

.....
(For County Committee)

.....
(For State Committee)

.....
(For Community Committee)

.....
(For County Committee)

.....
(For State Committee)

Date....., 1935. Date....., 1935. Date....., 1935.

V. Acceptance by Secretary.

In consideration of and in reliance upon the agreements of the producer herein set forth and the repre-

sentations made by the producer in and in connection with this contract, this offer is hereby accepted, this .....day of ....., 1935.

HENRY A. WALLACE,
Secretary of Agriculture, for and on behalf of the United States,

By .....,
Representative of Secretary of Agriculture.

VI. State Committee's Certificate of Compliance.

The undersigned State committeemen certify that the producer's total share of the acreage planted to rice in 1935 on all farm(s) covered by this Contract does not exceed the producer's allotment, and further certify that the producer's allotment and quota and the producer's total share of the acreage planted to rice in 1935 on all farms upon which the producer is participating in the production of rice in 1935 are correctly stated in items 1, 2, and 3, respectively, of part VIII below, and further certify that to the best of their information and belief the producer has fully complied with all terms of this Contract and all regulations and administrative rulings issued by the Secretary applicable up to and including the date of this certificate.

Date ....., 1935.

.....
(For State Committee)

.....
(For State Committee)

VII. Producer's Certificate of Compliance.

The producer certifies that his total share of the acreage planted to rice in 1935 on all farms upon which he is participating in any manner in the production of

rice does not exceed his allotment, that his allotment and quota, and his total share of the acreage planted to rice in 1935 on all farms on which he is participating in any manner in the production of rice in 1935 are correctly stated in items 1, 2, and 3, respectively, in part VIII of this contract, and further certifies that he is not sharing in the production of rice on any farms covered by this Contract are being farmed in a workmanlike manner, and that he has fully complied with all other terms of this Contract, and with all regulations and administrative rulings issued by the Secretary, applicable up to and including the date of this certification.

..... (Witness)
Date....., 1935.

....,
(Producer.)

VIII. Certified Basis for Determining Payments.

1. Producer's allotment .....(acres) .....
2. Producer's quota .....(bbl.) .....
3. Producer's share of acreage measured .....
4. Quota percentage (item 3 ÷ item 1).... .....%*
5. Number of barrels for payment (item 4 times item 2) ....

*If the above percentage is not more than 100 nor less than 85 per cent, then 85 per cent shall be used.

Do not write in this blank; for use by Comptroller's Office.

Computation of payments:

1935 first adjustment payment Item 5 times 81¢ per bbl. ....$.....

1935 second adjustment payment, Item 5 times ....¢ per bbl.....$.....

Total .....$.....

Do Not Write in Space Below.

Certificate of Comptroller.

Audited and approved for 1935 first adjustment payment in the amount of ..... $.....

JOHN B. PAYNE,
Comptroller,

By .....,
Auditor.

Schedule No.....

Date.....

Paid ..... by check on Treasurer of the United States in favor of payee or payees named thereon.

Check No..... $.....

Certificate of Comptroller.

Audited and approved for 1935 second adjustment payment in the amount of ..... $.....

JOHN B. PAYNE,
Comptroller,

By .....,
Auditor.

Schedule No. .....

Date.....

Paid ..... by check on Treasurer of the United States in favor of payee or payees named thereon.

Check No..... $.....

(Any intentional misrepresentation of fact made in this contract for the purpose of defrauding the United States will be subject to the criminal provisions of the United States Code.)

EXHIBIT "C".

Filed October 25, 1935.

Sec. 21. (a) No suit, action, or proceeding (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any Court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (d) of this section, may be reserved in the Court's order.

(b) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regulations of the Secretary with the approval of the President prior to the date of the adoption of this amendment,

are hereby legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which have accrued and remain unpaid on the date of the adoption of this amendment shall be assessed and collected pursuant to section 19, and to the provisions of law made applicable thereby. Nothing in this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary of Agriculture or of the President done or made prior to the date of the adoption of this amendment.

(c) The making of rental and benefit payments under this title, prior to the date of the adoption of this amendment, as determined, prescribed, proclaimed and made effective by the proclamations of the Secretary of Agriculture or of the President or by regulations of the Secretary, and the initiation, if formally approved by the Secretary of Agriculture prior to such date of adjustment programs under section 8 (1) of this title, and the making of agreements with producers prior to such date, and the adoption of other voluntary methods prior to such date, by the Secretary of Agriculture under this title, and rental and benefit payments made pursuant thereto, are hereby legalized and ratified, and the making of all such agreements and payments, the initiation of such programs, and the adoption of all such methods prior to such date are hereby legalized, ratified, and confirmed as fully to all intents and purposes as if each such agreement, program, method, and payment had been specifically authorized and made effective and the rate and amount thereof fixed specifically by prior Act of Congress.

(d) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the Court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be refunded or credited to any person (not

a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (a) and (b) of section 16, had the tax terminated by proclamation pursuant to the provisions of section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish to the satisfaction of the Commissioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the Court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any Court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held invalid a claim therefor (conforming to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2)

no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such Courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, on jurisdiction of such Courts based upon the amount in controversy.

(e) In connection with the establishment, by any claimant, of the facts required to be established in subsection (d) of this section, the Commissioner of Internal Revenue is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda, relative to any matter affecting the findings to be made by the Commissioner pursuant to subsection (d) of this section, to require the attendance of the claimant or of any officer or employee of the claimant, or the attendance of any other person having knowledge in the premises, and to take, or cause to be taken, his testimony with reference to any such matter, with power to administer oaths to such person or persons. It shall be lawful for the Commissioner, or any collector designated by him, to summon witnesses on behalf of the United States or of any claimant to appear before the Commissioner, or before any person designated by him, at a time and place named in the

summons, and to produce such books, papers, correspondence, memoranda, or other records as the Commissioner may deem relevant or material, and to give testimony or answer interrogatories, under oath, relating to any matter affecting the findings to be made by the Commissioner pursuant to subsection (d) of this section. The provisions of Revised Statutes 3174 and of Revised Statutes 3175 shall be applicable with respect to any summons issued pursuant to the provisions of this subsection. Any witness summoned under this subsection shall be paid, by the party on whose behalf such witness was summoned, the same fees and mileage as are paid witnesses in the Courts of the United States. All information obtained by the Commissioner pursuant to this subsection shall be available to the Secretary of Agriculture upon written request therefor. Such information shall be kept confidential by all officers and employees of the Department of Agriculture, and any such officer or employee who violates this requirement shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both, and shall be removed from office.

(f) No refund, credit, or abatement shall be made or allowed of the amount of any tax, under section 15, or section 17, unless, within one year after the right to such refund, credit, or abatement has accrued, a claim for such refund, credit, or abatement (conforming to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled to such refund, credit, or abatement, except that if the right to any such refund, credit, or abatement accrued prior to the date of the adoption of this amendment, then such one year period shall be computed from the date of this amendment. No interest shall be allowed or paid, or included in any judgment, with respect to any such claim for refund or credit.

(g) The provisions of section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax, or any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of section 317 of the Tariff Act of 1930.

RETURN TO RULE TO SHOW CAUSE WHY TEMPORARY INJUNCTION SHOULD NOT ISSUE.

Filed Oct 28th, 1935.

(Title Omitted.)

To the Honorable the Judge of the District Court of the United States in and for the Eastern District of Louisiana:

Now into Court comes Rufus W. Fontenot, Acting Collector of Internal Revenue, Defendant in the above entitled and numbered cause, through Rene A. Viosca, United States Attorney in and for the Eastern District of Louisiana, and Robert Weinstein, Assistant United States Attorney for said District, his attorneys, and by virtue of the rules and practice of this Court requiring the defendant in rule to file all defenses to the rule on the date set for the hearing on the application for a temporary injunction, and with full reservation of all of his rights under the pleadings in this cause,

answers the rule by stating that for lack of sufficient information to justify a belief he denies all of the allegations of paragraph two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen of the Bill of Complaint, and also denies the allegations of paragraph one with the exception of the statement relative to the defendant, which statement is admitted.

Your Respondent further avers that the proceedings should be dismissed for the reasons that this Honorable Court has no jurisdiction and that the Agricultural Adjustment Act is constitutional, valid and enforceable.

Wherefore, your Respondent prays this Honorable Court to dismiss the Bill of Complaint at Complainant's costs and to refuse granting any injunction in these proceedings, and for all general and equitable relief.

(Signed) RENE A. VIOSCA,
United States Attorney.
(Signed) ROBERT WEINSTEIN,
Asst. United States Attorney.

(Verification.)

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, personally came Rene A. Viosca, who is the United States Attorney for the Eastern District of Louisiana, who in his oath says: That in his aforesaid official capacity he is of counsel for defendant in the above case; that he has drawn the return to the rule to show cause and that all the allegations of fact therein are true and correct to the best of his knowledge, information and belief.

(Signed) RENE A. VIOSCA.

Sworn to and subscribed before me this 28th day of October, 1935.

(Signed) CLAUDE D. SHAW,
Deputy Clerk, U. S. District Court, Eastern District of Louisiana.

MOTION TO DISMISS.

Filed Oct. 28, 1935.

(Title Omitted.)

To the Honorable, the Judge of the District Court of the United States in and for the Eastern District of Louisiana:

Comes now Rufus W. Fontenot, Acting Collector of Internal Revenue, defendant in the above entitled and numbered cause, by Rene A. Viosca, United States Attorney in and for the Eastern District of Louisiana, and Robert Weinstein, Assistant United States Attorney for said District, his attorneys, with full reservation of his rights to further plead in this cause, and moves the Court to dismiss the Bill of Complaint filed herein, with costs to be paid by the Complainant upon the following grounds and for the following reasons:

I.

That this Court is without jurisdiction to restrain or enjoin the collection of taxes herein involved, or to hear and/or determine the issues presented by said bill of complaint because:

1. Section 3224 of the Revised Statutes of the United States prohibits the maintaining in any Court of a suit for the purpose of restraining the assessment and/or collection of Federal Tax.

2. Section 21-A of the Agricultural Adjustment Act, as amended, prohibits the maintaining in any Court of a suit for the purpose of restraining the assessment and/or collection of any processing tax under the said Agricultural Adjustment Act.

3. The bill of complaint sets forth no facts which, if true, would entitle complainant to the relief prayed for in a Court of Equity.

4. Complainant has a plain, adequate and complete remedy in the ordinary course of law.

II.

That the United States of America is the real party in interest, which may not be sued without its consent.

III.

That there is no actual controversy between complainant and defendant or between any parties over which this Court has jurisdiction within the purview of the Declaratory Judgment Act.

IV.

That the Declaratory Judgment Act was not intended by the Congress to be used for the litigation of questions arising under the Revenue Laws, and particularly was not intended as a means for obtaining injunctive relief.

V.

This proceeding is prohibited by the provisions of the Declaratory Judgment Act, as amended, and cannot be maintained. (Revenue Act of 1935, approved August 31, 1935, Section 405).

Dated: this 28th day of October, 1935.
(Sgd.) RENE A. VIOSCA,
United States Attorney.
(Sgd.) ROBERT WEINSTEIN,
Assistant United States Attorney.

ORDER OF COURT CONSOLIDATING ALL CASES FOR TRIAL, ETC.

Filed Oct. 28, 1935.

United States District Court, Eastern District of Louisiana, New Orleans Division.

Docket No. 321—In Equity:

Rickert Rice Mills, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 322—In Equity:

A. B. Dore, doing business under the name of The Dore Rice Mill,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 323—In Equity:

United Rice Milling Products Co., Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 324—In Equity:

Baton Rouge Rice Mill, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 325—In Equity:

T. Simon
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 326—In Equity.

Levy Rice Milling Company, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 327—In Equity:

Farmers Rice Milling Company, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 328—In Equity:

Noble-Trotter Rice Milling Co., Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Considering the stipulation and agreement of counsel for all parties made this day in open Court;

It is Ordered that the above numbered and entitled cases be and they are hereby consolidated for the

purpose of trial and that the affidavits and evidence offered in one case be considered to apply to all.

(Signed) JOHN McDUFFIE, Judge.

New Orleans, Louisiana, October 28, 1935.

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, on this day personally appeared W. M. Reid, known to me, who being by me first duly sworn in terms of law deposed and said on his oath as follows:

My name is W. M. Reid. I reside in New Orleans, Louisiana, and am Executive Secretary of the Rice Millers' Association. My principal duties are the preparation and interpretation of statistical and economic data with regard to the rice milling industry. I have been engaged in the rice milling business since 1909, and from 1916 to 1928, I personally operated a rice mill. I am thoroughly familiar with the rice milling industry in all of its phases.

I have read all of the allegations contained in Section 12 of Plaintiff's bill of complaint and Equity 321, Rickert Rice Milling Company vs. Rufus W. Fontenot, Equity 322, A. B. Dore vs. Rufus W. Fontenot, Equity 323, United Rice Milling Products Company, Inc., vs. Rufus W. Fontenot and companion cases, and all of such allegations are true and correct in every respect.

It is true that rice millers, when they purchase rough rice, consider the fact that they will have to pay a processing tax on the milling of such rough rice. However, this is simply one of the many factors entering into the miller's determination of what he ought to

pay for rough rice. As a practical matter, when the rice miller negotiates for the purchase of a given lot of rice, he first estimates what he believes he could get for such rice after milling on the existing market for clean rice and rice products. He then estimates what he thinks it will cost him to process the rough rice into its various grades and products, and in this estimate is included the amount of the processing tax, as well as other taxes. Having made these estimates, he determines what he ought to pay for the rough rice. However this is not necessarily what he does pay, because each individual miller is buying in competition with other millers. Thus, if other millers are paying more than he thinks he ought to pay, he has to meet the price the others are paying, if he is to get any rice. No individual miller makes the rough rice market. It is a market made of the composite purchasing of all millers in the particular territory. While the estimates above referred to are made with regard to the market for clean rice and rice products at the time of the purchase of the rough rice, that market, however, does not necessarily control since rough rice is not ordinarily milled, and the clean rice and products sold until several months after the purchase of the rough rice.

Since the market for clean rice and rice products fluctuates from day to day and month to month, the prospects of the future market has a bearing on what the miller may have to pay for rough rice. Optimism with reference to the future market for clean rice on the part of a sufficient number of rice millers will force up the market for rough rice, and all millers will have to meet the increased price of rough rice (if they are to have any rice at all), even though some of them may be pessimistic as to the future market.

For example, the present market price of rough rice is quite high with reference to the present market price for clean rice and rice products. In other words, using the estimates above referred to, the cost

of rough rice on today's market plus estimated cost of milling (including the processing tax) is more than the miller could reasonably expect to procure for the rice and rice products made from such rough rice on the existing market for clean rice and rice products. This present day market for rough rice is not made by any individual miller, but is made by the composite of purchases by all millers in the territory. Thus, as I have previously said, while the processing tax is considered by the miller in determining what he ought to pay for rough rice, it is simply one of many factors entering into such determination, and is by no means controlling.

Furthermore, it is impossible to tell on any given purchase of rough rice how much, if at all, that price has been affected by the existence of the processing tax.

I am familiar with accounting and statistical methods, and I know of no possible method of keeping books and records in the rice business which would accurately reflect the gain or loss from the purchase, milling and sale of any given lot of rice as distinguished from the gain or loss from the aggregate of all transactions during a season. A profit or loss, however, may be estimated at any given time by the use of averages, predictions and arbitraries.

The rice milling business is seasonal; the season beginning on August 1st and ending on July 31st, the operations gradually increasing until the peak is reached during the months of October, November and December, and decreasing to the end of the season. For this reason as well as others, the cost of milling varies greatly from time to time during the season. The estimated cost of milling which millers use in budgeting and determining what they want to pay for rough rice is arrived at by averaging the cost of the entire season so that this factor, when used to estimate a profit or loss on a given transaction, could never be exact, and might be very

much too high or very much too low when applied to that particular transaction.

Under these circumstances, when a miller purchases a particular lot of rice, he may believe that all, or a part of the processing tax to be assessed on such rice will be absorbed by the farmer. On the other hand, he may believe that all, or a part of such tax will be absorbed by himself. However, he can never even know, much less prove, even after all the clean rice and rice products made from the particular lot of rough rice has been sold, whether he, or the farmer, or the purchaser, or all of them together has borne the ultimate economic burden of the tax. This is because any belief he may have had as to whether the burden of the tax would fall, must of necessity, have been based in part on estimates, which are in turn, based on averages, which are never accurate with respect to any given lot of rice. In addition, such belief must also be based in part on assumptions as to market conditions on clean rice and rice products, which may or may not be correct. The rough rice may go through the mill on a day when large amounts are being milled, and the cost per unit is lower than the average; or, it might go through on a day when little rice was being milled resulting in a unit cost higher than the average; or, it might go through partly on one kind of a day, and partly on another. Furthermore, the rice may not mill out what he expected, even if the market on clean rice and rice products remains the same. And, in addition, the price at which he eventually sells the clean rice and rice products may be substantially less or substantially more than the sale price on which he based his presumptions.

There is no necessary relation between the market for clean rice and for rice products, since they are sold for different purposes, and this is an added reason why the miller cannot possibly allocate the cost of a given lot of rough rice among the clean rice and rice products produced from it.

For example, it is entirely possible for the market on bran or hulls to be relatively high, while the market on the various grades of head rice is relatively low.

The rough rice market is affected by the clean rice and rice products market and vice versa, but it is as impossible to determine their relative affect on each other as it is to determine whether the hen or the egg came first. I know of no way of determining what either the rough rice or clean rice marked would be if there were no processing tax. I do know, however, that the individual miller cannot force down the price paid to the farmer for rough rice because of the tax, and thus force the farmer to pay all, or a part of the burden of the tax. The individual miller simply pays the market price for rough rice which has been fixed by the composite action of all millers, and it would be impossible to prove whether a lowering of the rough rice market was the result of the assessment of the tax, or whether it was caused by other factors, such as a drop in time clean rice and rice products market, a composite pessimism on the part of rice millers as to the future market or other factors. The same thing is true with regard to the market for clean rice and rice products, and no individual miller can arbitrarily force that market upwards in order to pass on the tax.

(Sgd.) W. M. REID.

Sworn and subscribed to before me, the undersigned authority, this 28 day of October, 1935.

(Sgd.) HARRY R. CABRAL.

(Seal) Notary Public.

State of Texas,
County of Harris.

Before me, the undersigned authority, on this day personally appeared Homer L. Bruce, who, having been by me duly sworn, stated on oath as follows:

He lives in Houston, Harris County, Texas, and is duly licensed and practicing attorney at law. He is

familiar with the bills of complaint that are being presented to the United States District Court at New Orleans, Louisiana, on behalf of certain rice millers of Louisiana seeking an injunction against the collection of processing taxes on rice, having worked with his partner Mr. John P. Bullington in the preparation of said bills of complaint, and is familiar with the general practice of the rice industry of selling rice on samples and the filling of orders for clean rice by mixing rice from different lots of clean rice in the manner set out in the bills of complaint.

This affidavit is made in connection with the allegations in said bills that it is impossible for the plaintiff rice millers to comply with the requirements of Section 21 (d) of the Agricultural Adjustment Act that they shall establish that no part of the processing tax has been passed on to the consumer or taken out of the price paid the producer before they are allowed to recover any processing taxes paid.

Section 8 (3) of the Agricultural Adjustment Act gave the Secretary of Agriculture authority to issue licenses to processors, including processors of rice, and provided that the Secretary should have the right to revoke any license for violations of its terms. Section 8 (2) of the same Act authorized the Secretary to enter into marketing agreements with processors.

In the fall of 1933, the Secretary entered into a marketing agreement with members of the southern rice milling industry, and at the same time issued a license applicable to all mills. This marketing agreement and the license were in substantially the same form. Later various amendments were made to both the marketing agreement and the license.

In the marketing agreement and in the license, the Secretary of Agriculture fixed the price to be paid to farmers for rough rice, these prices being set out in Article III of the marketing agreement and license hereinafter referred to, namely, the one effective on July 21, 1934. Article IV, Section 1 of the license

effective July 21, 1934, set out the minimum price that millers might sell clean rice for in the domestic market and that section is as follows:

"Section 1. To effectuate the purposes of this Amended license and to aid in the carrying out and enforcement of the provisions hereof, no miller shall offer for sale, sell or deliver for domestic consumption any quantity of clean rice for an amount per pocket less than the sum of

(a) the minimum price, determined pursuant to article III and Schedule 1, for the grade, variety and quantity of the rough rice from which such clean rice was milled,"

(b) the conversion charge for such quantity of rough rice and prevailing at the time of such offer, sale or delivery, and

(c) the published car lot rail rate for transporting such rough rice from the customary point of delivery to the miller's mill, and

(d) the administrative assessment for such quantity of rough rice and prevailing when such rice was milled;

Provided, however, that any miller may offer clean rice for sale for export to foreign countries, on the foregoing basis less a maximum discount of 20 cents per barrel of such rough rice and may, if the rice is actually exported, sell or deliver clean rice for export to foreign countries on said basis less said maximum discount. The determination of the Millers Committee as to whether or not clean rice is actually exported

shall be final and conclusive, subject to appeal to the Secretary. Said minimum amounts, below which this section provides that clean rice shall not be offered for sale, sold, or delivered by a miller, apply f. o. b. the miller's mill.

Sec. 2. The conversion charge per barrel of rough rice shall, until and except as changed by the Secretary, be an amount equal to the sum of (a) seventy (70) cents per barrel of rough rice, (b) nine (9) cents per barrel of rough rice if standard one-hundred pound single packages are used for the clean rice, and (c) if cotton or paper inner linings or regular burlap outer slips are used for the clean rice, an additional five (5) cents per barrel of rough rice, or (d) if any other type of container is used for the clean rice, the actual invoice price for the container used. The Secretary may at any time and from time to time during the effective period, increase or decrease the amount of, and/or change the basis of computation of, the conversion charge."

One of the main purposes, if not actually the main purpose, of the Agricultural Adjustment Act and this license was to increase the price of rough rice paid the farmer, and in order to keep the rough rice price at a higher level, the Secretary attempted by this Section 1 to fix the price that clean rice might be sold at as roughly 79¢ per barrel above the cost of the rough rice. It was extremely important to keep the clean rice up to this level in order to maintain the rough rice price. In the fall of 1934, the Secretary of Agriculture brought proceedings, according to the information and belief of the affiant, against a number of different rice mills in Louisiana and to affiant's knowledge against Bay City Rice Mills of Bay City, Texas, a partnership composed of W. M. Loving and three other partners. The case against the Bay City Mills was case No. 11-1-7, entitled In the Matter of W.

M. Loving, R. Q. Pegram, S. M. Clements and L. D. Clements, Individually and as Co-partners trading under the name Bay City Rice Mills. One of the original charges against the Bay City Rice Mills was Charge No. 11, which charged in general terms that the Mill had sold clean rice for domestic consumption for an amount less than the price fixed for the sale of the clean rice pursuant to this license. This Charge 11 was later made more specific as follows:

"11. That the said Licensee since the effective date of said License has violated Section 1 of Article V of said License as in effect until July 21, 1934, 12:01 A. M. Eastern Standard Time, and Section 1 of Article IV of said License as in effect from July 21, 1934, 12:01 A. M. Eastern Standard Time on, in that said Licensee has offered for sale, sold and delivered, for domestic consumption, quantities of clean rice, to-wit: Clean rice lot numbered 36 on the books of the respondent derived from rough rice lot numbered 33 on the books of the respondent and purchased from C. E. Everitt; clean rice lot numbered 43 on the books of the respondent derived from rough rice lot number 33 on the books of the respondent and purchased from C. E. Everitt; clean rice lot numbered 123 on the books of the respondent derived from rough rice lot numbered 153 on the books of the respondent and purchased from A. P. Powers clean rice lot numbered 124 on the books of the respondent derived from rough rice lot numbered 154 on the books of the respondent and purchased from J. R. Reed; for an amount per pocket less than the price fixed for the sale of such clean rice pursuant to said Section 1 of Article V of said License as in effect up until July 21, 1934, 12:01 A. M. Eastern Standard Time, and pursuant to said Section 1 of Article IV of said License as in effect from July 21, 1934, 12:01 A. M. Eastern Standard Time on."

The affiant, together with Mr. W. E. Davant of Bay City, Texas, represented the Bay City Rice Mills in this hearing before the representatives of the Secretary of Agriculture on these charges, which hearing was held in Houston, Texas, and again on December 27, 1934, and ran through January 2, 1935.

The Bay City Rice Mills in that proceeding took the position, and so advised the Secretary of Agriculture's representatives, that it was utterly impossible, owing to the manner in which the rice industry is conducted, through the sale of clean rice on samples made up of mixes of different lots of clean rice, as more fully set out in the bills of complaint presented to the United States District Court at New Orleans in the processing tax suits, to determine in the case of any lot of rice, whether the clean rice had been sold for 79¢ more than the rough rice had cost, or for the amount above the cost of the clean rice that the Secretary required under Section 1 of Article IV.

The Secretary of Agriculture's representatives had access to all the books, vouchers and records of the Bay City Rice Mills, both in connection with its rough rice purchases and its clean rice sales and had several auditors continuously working on those records. The amount paid for the rough rice purchased from Evoritt, Powers and Reed, as set forth in said Charge II was established. The clean rice derived from the rough rice purchased from these three producers was traced at the hearing into the sales of clean rice into which they entered and the price of clean rice sales was established. However, owing to the fact that each quantity of clean rice that went into a sale was made up of a mixture from various lots of clean rice, which were in turn produced from various lots of rough rice bought from different producers, and owing to the fact that there was, as is usual in the rice business, an almost infinite variation in the combinations of these mixes of clean rice lots, and owing to the fact that rough rice when milled

produces different grades of clean rice, as set forth in the above mentioned bills of complaint, the Secretary of Agriculture was never able to show in that case whether or not the Bay City Rice Mills had obtained for the clean rice derived from the Evoritt, Powers, and Reed rough rice the amount (roughly 79c) above the cost of the rough rice that Article IV, Section 1, attempted to require the mill to get. Although that was one of the charges most vitally affecting the entire rice program in affiant's belief, and although the Secretary of Agriculture through his two attorneys who prosecuted the case and through his several auditors who were continuously working on the records of the Bay City Mills made every effort to prove the charge, the Secretary of Agriculture in his findings did not find that the charge had been proven and did not find that the Bay City Rice Mills had violated the license in the manner set forth in Charge 11.

Affiant believes, and on that belief states, that the reason the Secretary of Agriculture did not find that Charge 11 had been supported by any evidence was because it was utterly impossible practically to show whether clean rice had been sold for the amount above the rough rice cost that the license required.

The charge referred specifically to the sale of clean rice lots 36, 43, 123 and 124. Evidence as to the history of those clean rice lots is as set out below.

The clean rice in each case was included in various sales, each sale being represented by a separate invoice. The history of those clean rice lots was as follows: (As shown by the record in that case.)

Clean Rice Lot 36:

This rice came from rough rice lot 33 from C. E. Everitt. It was mixed with various other lots of rice and went in as a part of the rice sold and represented

by the following 9 invoices: Invoice Nos. 6615, 6622, 6634, 6639, 6645, 6767, 6770, 6771 and T-162 (R. 324-326).

The rice covered by invoice No. 6615 was made up of rice from various lots as follows:

39 pockets from lot 17, fancy
125 pockets from lot 31, fancy
200 pockets from lot 36, fancy
26 pockets from lot 33, heads
26 pockets from lot 31, heads
(R. 472.)

Invoice 6622 consisted of the following:

75 pockets from lot 26, fancy
250 pockets from lot 35, fancy
175 pockets from lot 36, fancy
(R. 475.)

Invoice 6634 consisted of the following:

148 pockets from lot 34 EP
75 pockets from lot 35 EP
75 pockets from lot 36 EP
81 pockets from lot 37 EP
68 pockets from lot 38 EP
150 pockets from lot 43 EP
201 pockets from lot 45 EP
(R. 478.)

There was no evidence whatsoever as to the different lots going to make up the rice on any of the other invoices heretofore or hereafter referred to, but each invoice represented a mix from various lots.

Clean Rice Lot 43:

This lot went into invoices 6634, 6639, 6644, T-126, T-127, T-128, and P-1006 (R. 327-329). No evidence

was introduced as to the component part of those invoices, except invoice 6634 above set forth, but they all consisted of mixes.

Clean Rice Lot 123:
This rice went into the following invoices:

Invoices Nos. 6832, 6833, T-187, T-188, 6840, T-195, 6839, T-200, 6885, 6886, T-201, T-202, T-187, T-188, and T-182 (R. 329 et seq.). No evidence was introduced as to the lots going into these invoices but they were all mixes.

Clean Rice Lot 124:
Affiant does not have the record at this time as to what invoices this lot went into but it was mixed into a number of mixed invoices.

To have traced the cost of the various lots of clean rice that went into each invoice would have been long involved and in fact practically impossible, and then to trace the cost of all rice going into all invoices into which any one of these clean rice lots went would have involved further and innumerable records and evidence.

This is further illustrated when it is noticed that a large number of rough rice lots and clean rice lots were involved, as, for example, in Charge 11 it referred to rough rice lot as high as No. 154 and clean rice lot as high as No. 104.

No charge was made that Bay City Rice Mills did not keep accurate and complete records of its operations.

Nor was any issue made as to the fact that the selling of rice by samples and mixing rice was usual and customary.

For example, Mr. F. A. Farda, who testified as a witness for the Secretary of Agriculture, and who is the Manager of Standard Rice Company, one of the largest rice milling companies in the United States, testified as follows:

"Mr. Farda:
Well, it is not common practice, in fact, it is not a practice to make a mixture just in order to put it in a warehouse and keep it. You make the mixture when you sell your rice, get ready to sell it, you sell it on a sample and then you make your composite mixture and your lots match your sample. *That is a common practice.*

"Mr. Davant:
Is it not a practice to make up these samples practically in the beginning of the season and to send them out as types?

"Mr. Farda:
The practice is to make hand mixes, and to send them samples, and when you sell on the samples you make your actual mixture, make it up." (R. 420-421.)

* * * *

"Mr. Farda:
The usual practice is, you don't make your mix until you have the rice sold." (R. 429-430.)

* * * *

"Mr. Farda:
You never make a mix until you have a sale made, because it would not be of material ad-

vantage to do so because you may not find another market for that particular blend that you make. *You therefore keep your rice in the original lots* to be in a position to make a blend of whatever the trade or market requires at that time." (R. 430.)

In connection with the above lots of clean rice, the Secretary's attorneys tried to make some allocation of the cost of rough rice to the different grades of clean rice produced as between fancy rice and head rice, but this was realized by all to be purely arbitrary allocation of cost without any real or sound basis for the same.

The above proceeding against Bay City Rice Mills was a proceeding before the Secretary of Agriculture to forfeit the license of Bay City Rice Mills for alleged violation of the license. The hearing was held before a representative of the Secretary of Agriculture.

In the foregoing affidavit the figure of 79c above rough rice cost has been referred to. That, as stated, was used only roughly. Under the license, the price for clean rice was to be the price fixed for rough rice plus the conversion charge plus the carload rail rate for transporting rough rice to the miller's mill plus the administrative assessment of 5c per barrel. The conversion charge was 70c per barrel plus 9c per barrel if standard one hundred pound single packages were used for clean rice plus 5c per barrel if cotton or paper interlinings were used. This would make the spread between the rough rice price and clean rice price approximately 89c exclusive of the freight item.

(Sgd.) HOMER L. BRUCE.

Subscribed and Sworn to before me, the undersigned authority, by Homer L. Bruce, this 27th day of October, 1935.

(Sgd.) RAYMOND REILSON,
(Seal) Notary Public in and for Harris County, Texas.

AFFIDAVIT.

State of Louisiana,
Parish of Orleans.

We, L. J. Bartel, R. F. Gould, and J. J. Mayer, each first being duly sworn, deposes and says:

That we are Deputy Collectors of the Treasury Department, Internal Revenue Service, Louisiana District, working in connection with the rice processing tax division, and that the experience of each in the rice industry, prior to becoming Deputy Collectors, is as follows: L. J. Bartel has had actual experience of approximately twenty years in buying rough rice; operation of rice milling plants, and the distribution of milled rice and by-products. R. F. Gould has had actual experience as follows: Fifteen years with the largest rice millers of the industry as Office Manager, and Chief Accountant; one year as Secretary, and auditor of a rough rice buying agency for New Orleans rice mills, and one and one-half years as traveling auditor for the Millers Committee, an agency operating under a Marketing Agreement for the Southern Rice Industry. J. J. Mayer has had approximately seven years actual experience in buying, selling and grading rough rice and distributing milled rice, and by-products. Our broad experience, as above outlined, reveals the following facts as existing in the rice milling industry:

There is no established market price on rough rice, and the method of buying the rough rice by the millers is a competitive bidding method. Each miller has his buyer, who makes the competitive bid on the basis outlined to him by the management of the mill. The basis is as follows: Rice millers determine the price to make their bid to a producer for his rough rice based on the prevailing market price for milled rice

computing the values to the different grades and by-products obtained from the processing of the rough rice being bid upon. *For example:*

A lot (parcel) of rough rice, estimated to produce (per barrel of 162 pounds) the following articles, grades, classes, etc., when processed, with estimated values as set out for each of the respective grades, classes, etc.:

Fancy Head Rice—100 pounds at 4½c	$4.50
Second Head Rice—4 pounds at 3c	.12
Screenings Rice—6 pounds at 2½c	.15
Brewers Rice—2 pounds at 2c	.04
Total yield per barrel—112 pounds.	
Total value	$4.81 plus
Approximate revenue from by-products (25c per barrel of 162 pounds)	.25
Total revenue	$5.06

Competitive bidding basis prior to the processing tax law requiring payment of a processing tax in cash: The above $5.06 is the gross value of milled rice articles and by-products resulting from a 162 pound barrel of rough rice. The mill would deduct from this gross figure the conversion charge, this conversion figure including the mills expense for processing the rough rice, and the estimated profit. Assuming that this conversion would be 60c per barrel, the mill would then bid the producer $5.06, less the 60c conversion, or $4.46 per barrel for the rough rice. The affiants solemnly swear that they have used and seen records of various rice mills establishing the basis as outlined above.

Competitive Bidding Basis after the Processing Tax Law requiring Payment of a Processing Tax in Cash: Since the beginning of the 1933 crop movement, which

become available for market during the month of July, and on which the processing tax applies, the rice millers use the same basis to determine values; however, in addition to deducting the conversion charge, the rice millers deduct also the 1c per pound processing tax on the rough rice, or $1.62 per barrel, and submits his bid to the producer, less this deduction, as follows:

From the value of the same lot of rough rice as above illustrated, estimated to produce milled rice and by-products with gross values of $5.06 per barrel, the rice miller deducts the following: Conversion 60c and processing tax $1.62, or a total of $2.22 per barrel, and makes bid to the producer of $2.84 per barrel for that particular lot of rough rice.

The affiants further solemnly swear that in their practical experience they have prepared, and have seen prepared profit and loss statements for certain given periods other than the entire season; further that these profit and loss statements are prepared on particular lots of rice, which is essential and necessary in their accounting procedure. Should the Agricultural Adjustment Act be held unconstitutional, the affiants state that the rice processors should enjoy the remedy and benefits given by Section 21 (d) of the said Agricultural Adjustment Act, as amended August 27th, 1935, because the records of buying processing and selling kept by the rice mills are adequate enough to properly allocate the cost of various grades of milled rice and its by-products, resulting from the processing of the rough rice; also to properly allocate in this cost, the processing tax, proportionately to the various grades of each lot of milled rice sold by itself alone or mixed. The greater portion of the milled rice sales are straight mill run lots without blending.

The affiants further solemnly swear that they have kept or have seen rice millers' records which reflect correct cost of production, profits from sales, etc., properly allocated to milled rice of various varieties, and grades, and by-products, and similarly allocated as to profits in selling prices, and should the Agricultural Adjustment Act be proven unconstitutional, each rice processor has sufficient records to enable him to recover in accordance with Section 21 (d) of the Agricultural Adjustment Act, as amended.

Summed up, the introduction of the rice processing tax has in no wise altered the customary manner or procedure followed by the rice milling industry in conducting their business.

(Sgd.) L. J. BARTEL,
(Sgd.) R. F. GOULD,
(Sgd.) JAMES J. MAYER.

Subscribed and sworn to before me this 28th day of October, 1935.

(Sgd.) HOMER R. ROBINSON,
Deputy Collector.

DECREE.

Filed October 28, 1935.

(Title Omitted.)

This cause came on today to be heard upon the application of the plaintiff for a preliminary injunction, as well as upon the motion filed on behalf of the

defendant to dismiss the bill of complaint, and was argued by counsel for the respective parties;

Whereupon, and upon consideration thereof, and for the reasons orally assigned;

It is Ordered, Adjudged and Decreed that the application for the Preliminary Injunction be and the same is hereby denied;

It is Further Ordered, Adjudged and Decreed that the plaintiff's petition and bill of complaint in all respects be dismissed.

(Signed) JOHN McDUFFIE, Judge.

New Orleans, Louisiana, October 28, 1935.

MOTION FOR INJUNCTION PENDING APPEAL.

Filed Oct. 29, 1935.

(Title Omitted.)

Comes now the plaintiff in the above entitled and numbered cause and moves the Court to grant plaintiff an injunction pending appeal for the reason that, unless such injunction pending appeal is granted plaintiff, plaintiff will be compelled to pay the taxes referred to in plaintiff's petition before plaintiff's appeal can be determined by the Circuit Court of Appeals, thus causing it great and irreparable injuries. Plaintiff offers to furnish good and sufficient bond by a solvent surety company in an amount to be fixed by

the Court, if the Court should grant its prayer for injunction pending appeal.

(Sgd.) McCOY, KING & JONES,
By C. A. McCOY,
Attorneys for Plaintiff.

Motion denied.
(Signed) JOHN McDUFFIE, Judge.

MOTION OF PLAINTIFF FOR APPEAL AND ORDER ALLOWING SAME.

Filed Oct. 29, 1935.

(Title Omitted.)

On motion of plaintiff in the above cause, and on suggesting to the Court that plaintiff is aggrieved by the decree entered by the Court herein on the 29th day of October, 1935, granting defendant's motion to dismiss, and that plaintiff desires to appeal therefrom with a supersedeas and a stay of proceedings in the District Court, pending appeal to the United States Circuit Court of Appeals for the Fifth Circuit, and

On further suggesting to the Court that said decree is contrary to the law and the evidence for the reasons set forth in the assignment of errors filed in plaintiff's behalf herein; and

On further suggesting to the Court that this motion being filed in open Court on the entry of such decree and in the presence of counsel for defendant, no citation of appeal is necessary or need issue herein;

It is Ordered by the Court that the appeal of plaintiff from the decree entered herein to the United States Circuit Court of Appeals for the Fifth Circuit be and the same is hereby allowed with supersedeas, on appellant's furnishing bond with good and solvent surety, conditioned as required by law and to be approved by the Court in the sum of $250.00 said bond to act as a supersedeas, as well as a bond for costs and damages;

It is Further Ordered by the Court that the appeal of plaintiff from the decree entered herein be made returnable to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, on or before November 27th, 1935, and that a certified copy of the record herein be transmitted to said Court of Appeals by the Clerk of this Court, and that no citation of appeal is necessary or need issue herein.

(Signed) JOHN McDUFFIE, Judge.

ASSIGNMENT OF ERRORS.

Filed October 29, 1935.

(Title Omitted.)

Comes now plaintiff and says that, in the record in the proceedings of the said Court in the above entitled cause and in the decree made and entered therein on the 28th day of October, 1935, there is manifest error and for error the said plaintiff assigns the following:

(1) The Court erred in sustaining defendant's motion to dismiss plaintiff's Bill of Complaint, because such action was contrary to the law and the evidence.

(2) The Court erred in over-ruling and not sustaining plaintiff's motion for a preliminary injunction because said ruling was contrary to the law and the evidence.

Wherefore, plaintiff prays that said Decree be, in all things, reversed, with instructions to the said District Court to grant plaintiff a preliminary injunction.

McCOY, KING & JONES,
By C. A. McCOY,
Solicitors for Plaintiff.

APPEAL BOND.

Filed October 29, 1935.

Know All Men By These Presents, that we, Noble-Trotter Rice Milling Co., Inc., as principal, and United States Fidelity & Guaranty Company, as surety, are held and firmly bound unto Rufus W. Fontenot, in the full sum of $250.00, to be paid to the said Rufus W. Fontenot, his attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents, sealed with our seals and dated this 29th day of October, 1935.

Whereas, lately, in the District Court of the United States for the Eastern District of Louisiana, judgment was rendered against Noble-Trotter Rice Milling Co., Inc., and in favor of Rufus W. Fontenot, denying plaintiff's application for a Preliminary injunction and dismissing plaintiff's Bill of Complaint, and the said Noble-Trotter Rice Milling Co., Inc., having obtained an appeal to reverse said judgment, citing and admonishing the said Rufus W. Fontenot to be and appear at a session of the United States Circuit Court of Appeals for the Fifth Circuit to be holden at the city of New Orleans, La., in said Circuit Court on the 27th day of November, 1935.

Now the condition of the above obligation is such that if the said Noble-Trotter Rice Milling Co., Inc., shall prosecute its appeal to effect and answer all damages and costs, if it fail to make its plea good, then the above obligation to be void, else to remain in full force and effect.

NOBLE-TROTTER RICE MILLING CO., INC.,
By C. A. McCOY, Principal.

UNITED STATES FIDELITY & GUARANTY COMPANY,
By M. L. ARRAS, Surety,
Its Attorney in Fact (Seal)

Approved October 29th, 1935.
(Signed) RUFUS E. FOSTER, Judge.

PRAECIPE.

Filed October 31, 1935.

(Title Omitted.)

To the Honorable H. J. Carter, Clerk of the United States District Court for the Eastern District of Louisiana:

You will please include in the record upon appeal in the above entitled cause the following documents and procedures:

1. Plaintiff's original bill of complaint.

2. Defendant's motion to dismiss and answer.

3. Order of Court consolidating causes for trial and providing for evidence in cause No. 324 in Equity, Baton Rouge Rice Mill, Inc., vs. Rufus W. Fontenot, etc., to be considered as evidence in this cause.

4. Affidavit of W. M. Reid.

5. Affidavit of Homer L. Bruce.

6. Joint affidavit of L. J. Bartel, R. F. Gould and J. J. Mayer.

7. Decree of the District Court.

8. Plaintiff's motion for injunction pending appeal and order denying same.

9. Motion and order for appeal.

10. Plaintiff's assignment of error.

11. Appeal bond.

12. This Praecipe.

13. Clerk's certificate.

McCOY, KING & JONES,
By C. A. McCOY,
Attorneys for Plaintiff and Appellant.

Approved:
(Sgd.) ROBERT WEINSTEIN,
Asst. U. S. Attorney, Counsel for defendant.

Clerk's Office:

I, HENRY J. CARTER, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 50 pages contain and form a full, true and complete transcript of the record, assignment of errors and all proceedings in the cause entitled "Noble-Trotter Rice Milling Co., Inc., vs. Rufus W. Fontenot, Individually and as Collector of Internal Revenue for the District of Louisiana," No. 328 In Equity of the Docket of this Court, as made up in accordance with the Praecipe for Transcript copied herein.

Witness my Hand and the seal of the said Court at the City of New Orleans, La., this 2nd day of November, A. D. 1935.

H. J. CARTER, Clerk,

By H. W. NIEHUES,

(Seal) Deputy Clerk.

[fol. 86] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AT NEW ORLEANS, LOUISIANA

No. 7951

NOBLE-TROTTER RICE MILLING COMPANY, INC., Appellant,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Appellee

MOTION FOR PRELIMINARY INJUNCTION PENDING APPEAL—Filed November 4, 1935

Comes now Noble-Trotter Rice Milling Company, Inc., appellant in the above numbered and entitled cause, and after due notice given to the appellee above named, respectfully states to the Court that the said appellant on the 28th day of October, 1935, brought a bill in equity in the United States District Court for the Eastern District of Louisiana, New Orleans Division, entitled Noble-Trotter Rice Milling Co., Inc., plaintiff, v. Rufus W. Fontenot, individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, defendant, and numbered 321 in equity, in the New Orleans Division of said United States District Court. In its bill of complaint in said cause appellant prayed for a temporary restraining order [fol. 87] to be issued immediately, and for a preliminary injunction after notice to the appellee, and for a permanent injunction on the final hearing of said cause, enjoining the appellee from assessing or collecting or attempting to assess or collect from the appellant in any manner whatsoever, whether by lien or jeopardy or distraint proceedings, in court or otherwise, any processing taxes levied under and pursuant to the Act of the Congress of the United States known as the Agricultural Adjustment Act and amendments thereto, or purported to be levied by said Act, upon the appellant for the processing of rice during the month of September, 1935, and for subsequent months, and any interest or penalty on account of appellant's failure to pay said processing tax, and from imposing or giving

notice of intention to impose any lien for said taxes upon the property, real or personal of appellant. That said application for a preliminary injunction was set down for hearing before the Judge of said District Court at New Orleans on Monday, October 28, 1935. The notice thereof was duly waived by the appellee. Prior to said hearing the said appellee filed his motion to dismiss and answer to said bill of complaint, copies of which motion and also of appellant's bill of complaint are contained in the record in this cause filed in this Court.

After a hearing had on appellant's motion for a preliminary injunction and on the said motion to dismiss, the Honorable John McDuffie, acting judge of said District Court on October 28, 1935, refused appellant's motion for a preliminary injunction, granted the motion of the appellee to dismiss the said bill of complaint and dismissed the said bill [fol. 88] of complaint, to which appellant herein duly excepted. Thereafter, on the 29th day of October, 1935, the appellant herein in open court and in the presence of counsel for appellee filed its petition for an appeal, which was duly allowed by the said judge of the said United States District Court who tried said cause, and filed at the same time its assignments of errors, and also a cost bond was duly filed and approved by the said judge of said District Court. At the time appellant presented its said petition for appeal, it also petitioned said judge of the District Court to grant it an injunction enjoining the appellee in the manner set out in its request for a preliminary injunction in its bill of complaint, pending the appeal of appellant to this Honorable Court, but the said judge of said District Court on October 29, 1935, refused appellant's said petition and refused to grant appellant said injunction pending said appeal.

Appellant has therefore perfected its appeal to the Circuit Court of Appeals for the Fifth Circuit, making said cause returnable at New Orleans, Louisiana, as provided by law. Appellant has duly caused to be prepared a transcript of the record in said cause and has filed the same, in accordance with law, and within the time allowed by law, in the Clerk's office in the Circuit Court of Appeals at New Orleans, Louisiana.

In said bill of complaint appellant alleged that the amount of processing taxes on account of the rice processed by the

appellant during the month of September, 1935, was $17,331.90, and that under said Agricultural Adjustment Act appellant was required to pay said amount to appellee on or before October 30, 1935, and that appellee was charged with the duty of collecting said tax, and if said tax were [fol. 89] not paid on or before October 30, 1935, appellee would assess said tax against the appellant and serve upon appellant notice and demand for the payment thereof and would allow appellant ten days from receipt of such notice within which to pay the same; that in the event said tax should not be paid within said time, appellee would assess against appellant a penalty equal to 5% of the amount of the tax and interest on the tax at the rate of 1% per month from the due date of the tax until paid; that if the appellant failed to pay the tax within said ten days, appellee would proceed to collect the tax, penalty and interest by filing a notice of lien on all of appellant's property and by distraining upon and selling such of appellant's property as might be necessary to realize the amount of said tax, penalties and interest; and that additional processing taxes for months subsequent to September, 1935, will accrue and be assessed against and collected from the appellant in the same manner as the tax for the month of September.

Appellant alleged that the said processing tax was illegal and unconstitutional, and violated various provisions of the Constitution of the United States in many particulars, more fully set forth in appellant's bill of complaint. The appellant also alleged that under an amendment to said Agricultural Adjustment Act approved on August 24, 1935, a Section 21 (d) was added to said Act, which section provides in substance that appellant should be allowed no recovery of any of said taxes paid, if the same should be illegal or unauthorized, unless appellant established to the satisfaction of the Commissioner of Internal Revenue, and [fol. 90] the Commissioner should so find, that neither appellant nor any person directly or indirectly under appellant's control or having control over appellant, has, directly or indirectly, included such amount in the price of the rice with respect to which it was imposed or of any article processed from the rice with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of

such amount in the charge or fee for processing rice, and that the price paid by the appellant or such person for said rice was not reduced by any part of such amount. Appellant in said bill of complaint, alleged, as more fully set out in said bill of complaint, that under said Section 21 (d) it had no adequate remedy at law by which it could recover any part of said taxes if same were unconstitutional and illegal, and that it was impossible, owing to the peculiar conditions existing in the rice milling industry and in the purchase, milling and sale of rice, for appellant to discharge the burden placed upon it by said Section 21 (d), all as more fully set out in appellant's bill of complaint.

Appellant further alleged that in said amendment of August 24, 1935, a new section known as Section 21 (a) was added to said Agricultural Adjustment Act, which in substance provided that no suit to enjoin the collection of said processing taxes should be maintained in any court. Appellant further alleged that said section was not intended to apply, and did not apply, to the injunction prayed for by appellant, inasmuch as appellant had no adequate remedy at law. Appellant further alleged that if said section should be interpreted as prohibiting the injunction [fol. 91] prayed for by appellant, then the said section, together with the other provisions of said Act, was invalid and in violation of the Fifth Amendment to the Constitution, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes would be collected from appellant and appellant would have no remedy by which he could recover taxes and would have no remedy to prevent the collection of said unlawful taxes and would be forever deprived of the right to test the constitutionality of said taxes.

Appellant further alleged that said Section 21 (d) denied the appellant a complete and adequate remedy at law for the various other reasons set forth in said bill of complaint.

At the hearing before the District Judge appellant introduced in evidence the affidavit of W. M. Reid, Executive Secretary of The Rice Millers Association, a man of twenty-six years experience in the rice business, in which affidavit he set out fully and in detail the methods of conducting the rice business and the manner in which the rough rice market and the clean rice market is made, showing that it would be utterly impossible for any rice miller to accurately determine whether he had made a profit or a loss on any

given transaction, much less prove whether he had passed the tax, or any part thereof, on. Appellant also introduced in evidence the affidavit of Homer L. Bruce, a practicing attorney at the bar at Houston, Texas, setting out in detail the proceedings under a complaint brought by the Secretary of Agriculture to revoke the license of a rice mill under the Act in effect prior to the present Act. The Secretary of Agriculture sought to revoke the license of this mill for [fol. 92] failure to sell clean rice and rice products processed from rough rice at a price approximately 79c higher than the price paid for the rough rice. The affidavit showed that although the Government was able to prove the cost of the rough rice and to trace the particular rough rice into various "mixes" of clean rice and the price procured for these "mixes" of clean rice it was never able to prove that the price procured for the clean rice processed from the particular lot of rough rice was not 79c more than the price paid for the rough rice because of the fact that clean rice is customarily sold in "mixes" of various lots of rice and there was no way to allocate the price procured for the mixed rice sold to the various lots of rough rice which went into the mix.

In the meantime, appellant alleges that for the foregoing reasons and those set forth in its said bill of complaint in said cause, and because the judge of said court in his said order dismissed said bill of complaint and refused to grant appellant the injunction prayed for pending the appeal in this case, the appellee herein will, to the irreparable damage and loss of the appellant herein, proceed to collect the said taxes for September, 1935, which are now due and unpaid, from appellant, and said taxes for subsequent months, unless restrained by a preliminary injunction granted by this court. The appellant alleges that not only has it no complete remedy at law, but in fact no remedy at law at all, for the reasons hereinabove set forth and set forth more in detail in said bill of complaint, that it is faced with the alternative of paying the tax with the certainty that no remedy at law exists for its recovery in case it be held that it was unconstitutionally assessed, or of refusing to pay [fol. 93] and running the risk of becoming liable for the heavy civil and criminal penalties provided in the Act, and that the said judge of said District Court should not have dismissed said bill of complaint, but should have over-

ruled the same, and upon the hearing should have granted the preliminary injunction as prayed for in said bill of complaint.

Appellant would further show that there is now pending in the Supreme Court of the United States a case involving the constitutionality of the said Agricultural Adjustment Act, being the same case in which the Circuit Court of Appeals for the First Circuit declared the Act to be unconstitutional, and that the Supreme Court, according to press dispatches, has set said cause for oral argument on Monday, December 9, 1935; that a decision by the Supreme Court of the United States upon the validity of the said Act may be expected within a reasonable time thereafter; that the first benefit payment to farmers provided for in said Act has been made, and that under the standard form of contract between the Secretary of Agriculture and rice farmers no further payment is due until such time after December 1, 1935, as the Secretary shall determine and declare what further amount of benefit payments shall be made and when they shall be made; that the taxes to be collected under said Act are for the purpose of making these benefit payments and that since the Secretary of Agriculture need make no further benefit payments until such time after December 1, 1935, as may be fixed by him, the delay of the Government in collecting these taxes which might be occasioned by the granting of the injunction prayed for herein will not occasion any injury to the Gov-
[fol. 94] ernment nor will it unduly interfere with the achievement of the program set out in said Act if the Act be held constitutional. On the other hand, as hereinabove alleged, great and irreparable damage will be done to plaintiff in the event the law is held unconstitutional unless the injunction hereinafter prayed for is granted.

Appellant further shows that unless an injunction pending appeal be granted so as to preserve the status quo, the subject-matter of the suit will be lost and the jurisdiction of this Honorable Court defeated. Such injunction is necessary to preserve the jurisdiction of this Honorable Court, and in order that appellant may enjoy the just fruits of a favorable decision on this appeal.

The appellant states that it is ready and willing to give any reasonable bond or other security that may be required by any order of this Court, including the deposit from

month to month of the amount of tax due, in a depository to be designated by the court, and therefore prays that this Court make an order granting appellant a preliminary injunction enjoining and restraining the appellee from assessing or collecting or attempting to assess or collect from appellant in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in court or otherwise, the said processing taxes for the month of September and subsequent months and any other processing taxes under and pursuant to said Agricultural Adjustment Act upon rice processed by appellant, and any interest or penalty on account of appellant's failure to pay said processing taxes, and from imposing or giving notice of intention to [fol. 95] impose any lien for said taxes upon the property, real or personal, of the appellant, pending the hearing of appellant's appeal in this case and upon such conditions and terms as to this Court may seem just.

C. A. McCoy. McCoy, King & Jones, of Counsel.

[fol. 96] *Duly sworn to by C. A. McCoy. Jurat omitted in printing.*

[fol. 97] IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 7951

NOBLE-TROTTER RICE MILLING CO., INC.,

versus

RUFUS W. FONTENOT, Acting Collector of Internal Revenue

ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION PENDING APPEAL—November 5, 1935

Upon the authority of Rickert Rice Milling Company, Inc., vs. Rufus W. Fontenot, etc., the application for injunction in the above numbered and entitled case is denied.

[fol. 98] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7937

RICKERT RICE MILLING COMPANY, INC., Appellant,

versus

RUFUS W. FONTENOT, Acting Collector of Internal Revenue, Appellee

Appeal from the District Court of the United States for the Eastern District of Lousiana

Motion for Preliminary Injunction Pending Appeal

Before Foster and Sibley, Circuit Judges, and Strum, District Judge

OPINION—November 5, 1935

By the COURT:

On consideration of the application for an injunction to stay collection of taxes levied under the provisions of the Agricultural Adjustment Act, as amended by the Act of August 24, 1935, the Court is of the opinion that the taxpayer has a remedy at law to recover back any taxes illegally [fol. 99] exacted and, further, that the provisions of the Act as amended deprive the Court of jurisdiction to grant injunctive relief.

It is ordered that the application be Denied.

[fol. 100] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 101] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 25, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is

granted, and the case is assigned for argument on Monday, December 16, next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 40,141. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 587. Noble-Trotter Rice Milling Co., Inc., petitioner, vs. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana. Petition for a writ of certiorari and exhibit thereto. Filed November 14, 1935. Term No. 587, O. T., 1935.

FILE COPY

Office Supreme Court, U.S.
FILED
NOV 11 1935
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1935

No. 577

RICKERT RICE MILLS, INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND SUPPORTING BRIEF THEREON.

HOMER L. BRUCE,
JOHN P. BULLINGTON,
Attorneys for Petitioner.
Houston, Texas.

BAKER, BOTTS, ANDREWS & WHARTON,
Of Counsel.
Houston, Texas.

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IN THE

Supreme Court of the United States

RICKERT RICE MILLS, INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

PETITION OF RICKERT RICE MILLS, INC., FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

MAY IT PLEASE THE COURT:

The petitioner, Rickert Rice Mills, Inc., respectfully prays for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit at New Oreans, Louisiana, to hear this cause prior to its decision by the Circuit Court of Appeals and to review the decision of the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, entered in this cause on October 28, 1935, and further to review the decision of the Circuit Court of Appeals in denying

the application of petitioner for a preliminary injunction pending the appeal of said cause in said Circuit Court of Appeals. Petitioner respectfully shows this Honorable Court:

1.

Questions Presented.

(*a*) Is the so-called Agricultural Adjustment Act, as amended on August 24, 1935, constitutional?

(*b*) Does Section 21(d) of said Act deprive petitioner of an adequate remedy at law?

(*c*) Does Article 3224 R. S. or Section 21(a) of said Act forbid the granting of an injunction when petitioner has no adequate remedy at law?

(*d*) If Section 21(a) of said Act forbids an injunction in a case where petitioner has no adequate remedy at law, is said Section 21(a) constitutional?

(*e*) If Congress may constitutionally deprive the Courts of jurisdiction to enjoin the collection of illegal taxes and at the same time deprive the taxpayer of any legal remedy to recover such illegal taxes, may the summary proceedings provided in Sections 115 to 131, Title 26, U. S. C., as amended, be constitutionally employed for the collection of such illegal taxes?

2.

Summary Statement of the Matter Involved.

Petitioner owns and operates a rice mill at New Orleans, Louisiana. Under the Act of the 73rd

Congress, P. L. No. 10, approved on May 12, 1933, as amended, known as the Agricultural Adjustment Act, there is imposed a processing tax of 1c per pound upon the first processing or milling of rough rice. The amount of tax shown to be due by petitioner in its return filed for the month of September, 1935, was $57,275.42. This tax was due and payable to respondent on October 30, 1935. October 28, 1935, petitioner filed its bill in the District Court to restrain the collection of this tax and any tax which might become due in subsequent months on the ground that said tax was unconstitutional, that petitioner was without adequate remedy at law, and that without such injunction it would be irreparably damaged. (R. 2.) Respondent filed a motion to dismiss on the ground that the Court had been deprived of jurisdiction by Art. 3224, U. S. R. S., and Section 21(a) of the Agricultural Adjustment Act. (R. 54.) Seven similar suits were consolidated with this by Court order (R. 58) and the Court heard at the same time petitioner's motion for a preliminary injunction and respondent's motion to dismiss for want of jurisdiction. At the hearing petitioner introduced two affidavits in support of its allegation that, due to the peculiar nature of the rice business, it was impossible to accurately determine the profit or loss resulting from the processing and sale of any given lot of rice. (R. 60, 65.) The affidavits further showed that it is impossible to prove what part, if any, of the processing tax is passed forward to the consumer or back to the producer or what part is borne by the miller. Respondent intro-

duced the joint affidavit of three deputy Internal Revenue Collectors which affidavit was inconsistent with the affidavits of petitioner in only one respect. (R. 75.) At the conclusion of the hearing the Court denied petitioner's motion for a preliminary injunction and granted respondent's motion to dismiss upon the ground that the Court was deprived of jurisdiction by Article 3224, U. S. R. S., and Section 21(a) of said Act. (R. 79.) Said Article 3224* and Section 21(a)* forbid the granting of an injunction to restrain the collection of any tax, and of the processing tax here involved, respectively. Under Section 21(d)* of said Agricultural Adjustment Act it is provided that no tax collected under the Act may be recovered except upon proof satisfactory to the Commissioner of Internal Revenue that the payer of the tax had not, directly or indirectly, included such amount in the price of the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee of the commodity, and that the price paid by the taxpayer for the unprocessed commodity was not reduced by any part of such amount. The bill below, and supporting affidavits, show the manner in which rough rice is milled and the manner in which it is sold, and that from any given lot of rough rice many different grades and qualities of clean rice are produced. The usual and customary method of selling rice is to sell it on samples made up of mixtures of different lots of clean rice which in turn are derived from differ-

*Set out in Appendix to Brief.

ent lots of rough rice purchased from different parties, and when an order for clean rice is received, based on any particular sample, the miller fills the order of clean rice from a mixture from various lots of clean rice. Many sales are made during a given season made up of various mixtures of clean rice, and there is practically an unlimited combination of lots of clean rice that go into the various sales. There is no way of accurately allocating to the various lots of rice going into any given mix any definite part of the price received for the entire mix. (R. 16-21.) Petitioner's sworn bill and affidavits showed that for these reasons it is impossible for petitioner or any other rice miller to make the proof required for recovery of the tax paid, if the law be held unconstitutional, even if it were otherwise possible to make such proof. Petitioner's sworn bill alleged that unless the injunction prayed for was granted: (1) It would be without adequate remedy at law to recover the taxes paid in the event they be held unconstitutional; (2) if any legal remedy existed, it would entail a multiplicity of suits; (3) it would become subject to heavy civil and criminal penalties and (4) it would suffer great and irreparable damages for specific reasons set out. (R. 15, 16, 23.) Respondent filed no answer denying any of these allegations. Petitioner alleged below that the said Section 21(d) did not apply to its suit because petitioner had no adequate remedy at law. It alleged further that, if said section be interpreted as prohibiting the injunction prayed for, the said

section, together with the other provisions of the Act, violated the Fifth Amendment to the Constitution in that said unconstitutional taxes would be collected from petitioner and petitioner would have no remedy by which it could recover said taxes, if they were unlawful, and thereby petitioner would be deprived of the right to test the constitutionality of the taxes. (R. 23.) Petitioner offered to give such security as the Court might require if the injunction were granted. (R. 24.) There was neither pleading nor proof that the granting of the injunction would in any wise injure respondent if the tax were ultimately held constitutional.

On October 29, 1935, petitioner was allowed an appeal. (R. 81.) On the same day petitioner applied for, and was denied, an injunction pending appeal. (R. 80.) The record was duly filed in the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, on October 31, 1935, being Cause No. 7937 on the docket of that Court. On November 4, 1935, petitioner applied to said Circuit Court of Appeals for an injunction against the respondent pending the hearing of its appeal (R. 87), but the Circuit Court of Appeals on November 5, 1935, denied the application. (R. 98.)

3.

Reasons Relied Upon for the Allowance of the Writ.

This case, with its companion cases, presents an entirely unprecedented situation. It presents questions of gravity and importance. It involves the

constitutionality of an important Federal statute and the rulings of the Court below, insofar as they may be taken to have held the statute constitutional, are probably in conflict with the decisions of this Court in *Loan Association v. Topeka* (1874), 20 Wall. 655; *Child Labor Tax Case* (1922), 259 U. S. 20; *Hill v. Wallace* (1922), 259 U. S. 44; *Hammer v. Dagenhart* (1918), 247 U. S. 251; and *Schechter Poultry Corporation v. United States* (1935), 295 U. S. 495; and contrary to the decision of the United States Circuit Court of Appeals for the Second Circuit in *Butler et al. v. United States*, (1935), 78 Fed. (2nd) 1. The District Court and the Circuit Court of Appeals in holding that Congress may constitutionally forbid the granting of an injunction against summary collection of taxes, while at the same time depriving the taxpayer of any adequate remedy at law, presents a constitutional question of great importance never decided by this Court and a question which should be definitely decided. Though this question has never been *directly* decided by this Court, the decisions of the Courts below probably conflict with the decisions of this Honorable Court in *Truax v. Corrigan* (1921), 257 U. S. 312; *Brinkerhoff-Faris Trust & Savings Company v. Hill* (1930), 281 U. S. 673, and inferentially *Graham & Foster v. Goodcell* (1931), 282 U. S. 409, 430, 431; *Michaelson v. United States* (1924), 266 U. S. 42, 64, 65, 66, and *Phillips v. Commissioner* (1931), 283 U. S. 589, 596. This holding was particularly erroneous when the respondent was, at the same time,

authorized to collect the tax by summary proceedings under Sections 115 to 131, Title 26, U. S. C., as amended.

In holding that Article 3224, U. S. R. S., and Section 21(a) of said Act deprive the courts of jurisdiction to grant an injunction under the unusual and extraordinary circumstances of this case, the courts below decided an important question of Federal law in a way probably in conflict with the decisions of this Honorable Court in *Hill v. Wallace* (1922), 259 U. S. 44, and *Miller, Collector, v. Standard Nut Margarine Company* (1932), 284 U. S. 498, and in conflict with the unreported decisions of the Second, Sixth, Eighth, Ninth and Tenth Circuit Courts of Appeals, which granted injunctions pending appeal in cases similar to the present case.

The District Court, in refusing to grant petitioner's motion for a preliminary injunction, and in refusing to grant petitioner's motion for an injunction pending appeal, and the Circuit Court of Appeals in refusing to grant petitioner's motion for an injunction pending appeal, have so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Honorable Court's power of supervision and this action of the courts below is probably in conflict with the decision of this Honorable Court in *Ohio Oil Company v. Conway* (1929), 279 U. S. 813, and is in conflict with the holdings of every other Circuit Court of Appeals which has passed upon this question, to wit, the Circuit Courts of Appeals for the Second, Sixth, Eighth, Ninth and Tenth Circuits.

4.

Reasons Relied Upon for the Allowance of Writ Before Action on the Merits by the Circuit Court of Appeals.

This case, with its companion cases, presents a situation unparalleled in American history. Under the provisions of Sections 115 to 131, Title 26, U. S. C., as amended, the respondent is armed with weapons for the immediate forcible collection of the tax from petitioner, and those similarly situated, which they are powerless to resist. The District Court and Circuit Court of Appeals below have, contrary to the decisions of all other Circuit Courts of Appeals passing upon the question, held themselves deprived of any jurisdiction whatsoever to grant petitioner any relief. In the ordinary course of events it will be six or seven months before petitioner's appeal to the Circuit Court of Appeals will be heard on the merits. Meanwhile, through collection of the tax the subject-matter of the appeal may be destroyed, and the case become moot before a hearing may be had in the Circuit Court of Appeals. In addition, the order of the court below, though apparently an interlocutory order, has the effect of finally disposing of the appeal on the merits. The questions involved are of great national importance, and deserve the prompt consideration of this Honorable Court. This petition raises important questions of constitutional law not raised by any other petition now before this Court, and particularly it raises the question whether the provisions of Sections 115 to 131, Title 26, U. S. C., as

amended, are constitutional, if it be held that Congress may constitutionally deprive a taxpayer of all adequate remedy at law to recover taxes illegally collected while at the same time forbidding the granting of an injunction to restrain their collection. Hundreds of similar suits throughout the country involve this question, as well as the others herein raised, and the situation thus presented is so unusual and unprecedented as to justify this Honorable Court in requiring the record below to be certified to it forthwith for decision.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari may issue out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Fifth Circuit commanding said court to certify and send to this Court, on a day certain, to be therein designated, a full and complete Transcript of the Record and all of the proceedings in the Circuit Court of Appeals in said cause entitled Rickert Rice Mills, Inc., Appellant, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Appellee, No. 7937 on its docket, to the end that said cause may be reviewed and determined by this Court as provided by Section 240 of the Judicial Code, as amended, and that your petitioner may have such other and further relief or remedy in the premises as this Court may deem appropriate and in conformity with said provisions of the Judicial Code, and that said judgment of the

District Court be reversed by this Honorable Court and such relief granted as is appropriate to the cause.

RICKERT RICE MILLS, INC.,

By HOMER L. BRUCE,

JOHN P. BULLINGTON,
Attorneys for Petitioner.

Of Counsel,
BAKER, BOTTS, ANDREWS & WHARTON,
Houston, Texas.

No.....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

RICKERT RICE MILLS, INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

The Opinions of the Courts Below.

The District Court wrote no opinion and the Circuit Court of Appeals has not yet rendered any decision on the merits of the appeal. The *per curiam* opinion of the Court denying the injunction pending appeal is found on page 98 of the record.

II.

Jurisdiction.

(1) Jurisdiction of this cause is conferred upon this Honorable Court by *Judicial Code, Section* 240, *as amended; United States Code, Title* 28, *Section* 347.

(2) The date of the judgment of the Trial Court to be reviewed is October 28, 1935 (R. 79), the date of the order of the Circuit Court of Appeals denying the injunction pending appeal sought to be reviewed is November 5, 1935. (R. 98.)

(3) The power of this Honorable Court to review the case prior to a disposition of it by the Circuit Court of Appeals and to review the action of the Circuit Court of Appeals in refusing to grant an interlocutory order to preserve the *status quo* is sustained by the following, among other, cases:

The Three Friends (1897), 166 U. S. 1, 49.
Denver v. New York Trust Company (1913), 229 U. S. 123, 133.
Harriman v. Northern Securities Company (1905), 197 U. S. 244, 286.
American Construction Company v. Jacksonville Railway (1893), 148 U. S. 372, 384.
Forsyth v. Hammon (1897), 166 U. S. 506, 513.
In re Chetwood (1897), 165 U. S. 443, 462.
McClellan v. Carland (1910), 217 U. S. 268, 277.
Hanover Star Milling Company v. Metcalf (1916), 240 U. S. 403, 408.
Gay v. Ruff (1934), 292 U. S. 25, 30.

III.

Statement of the Case.

A full statement of the case has been given under heading 2 in the petition and in the interest of brevity the statement is not repeated at this point.

IV.

Specification of Errors.

(1) The District Court erred in holding that it was without jurisdiction to hear petitioner's cause because of the provisions of R. S. Sec. 3224, and Sec. 21(a) of the Agricultural Adjustment Act, as amended.

(2) The District Court erred in refusing to grant petitioner a preliminary injunction pending a hearing on the merits.

(3) The District Court and Circuit Court of Appeals erred in holding that said Sec. 21(a) did not deprive petitioner of its property without due process of law contrary to the Fifth Amendment to the Constitution of the United States, in view of the allegations in the bill, admitted by the motion to dismiss, that petitioner was without remedy at law to recover the taxes paid if they were held to be illegal.

(4) The District Court and the Circuit Court of Appeals erred in holding that if said Sec. 21(a) forbade the granting of an injunction restraining the collection of the tax, and if petitioner had no remedy at law to recover the same, if it be held they were illegally collected, respondent could neverthe-

less employ the summary proceedings for immediate collection of the tax provided in Sections 115 to 131, Title 26, U. S. C., as amended, without depriving petitioner of its property without due process of law contrary to the Fifth Amendment to the Constitution of the United States.

(5) The District Court and the Circuit Court erred in holding that either or both R. S. §3224, and Sec. 21(a) of said Act prevented the granting of an injunction under the special and extraordinary circumstances presented by this case.

(6) The Circuit Court of Appeals erred in holding that petitioner had "a remedy at law to recover back any taxes illegally exacted."

(7) The Circuit Court of Appeals erred in refusing to grant petitioner an injunction to preserve the *status quo* pending its appeal from the order dismissing the bill.

(8) The Circuit Court of Appeals erred in refusing to grant petitioner an injunction pending the appeal for the purpose of preserving the appellate jurisdiction of that Court.

(9) The Circuit Court of Appeals erred in holding either or both R. S. §3224, and Sec. 21(a) of said Act "deprived the Court of jurisdiction to grant injunctive relief."

(10) The District Court and Circuit Court of Appeals erred in not holding the Agricultural Adjustment Act, as amended, to be violative of Art. 1, Sec. 1, Amendments Five and Ten of the Constitution of the United States.

Petitioner expects to rely on all of the foregoing specifications of error.

V.

ARGUMENT

Summary of the Argument.

POINT A

Neither R. S. §3224, nor Sec. 21(a) of the Agricultural Adjustment Act, properly interpreted, bars injunctive relief in this case.

POINT B

Sec. 21(d) of the Agricultural Adjustment Act deprives petitioner of any adequate remedy at law.

POINT C

If R. S. §3224, and Sec. 21(a) of the Agricultural Adjustment Act forbid the granting of an injunction in this case, then they are unconstitutional.

POINT D

The summary proceedings provided in Sections 115 to 131, Title 26, U. S. C., as amended, are unconstitutional when applied to a taxpayer who has been deprived of both legal and equitable remedies to test the constitutionality of the tax thus sought to be collected.

Point E

The Agricultural Adjustment Act, as amended, is unconstitutional.

Point F

This is a case where certiorari should be granted prior to the final decree by the Circuit Court of Appeals.

Point A

Inapplicability of R. S. §3224 and Section 21(a) of the Agricultural Adjustment Act.

In wording and in effect R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act, as amended, are for all practical purposes identical. For the convenience of the Court the two acts are here set out side by side:

R. S. §3224.	A. A. A. Sec. 21(a).
No suit	No suit, action or proceeding (including probate, administration, receivership, and bankruptcy proceedings)
shall be maintained in any court	shall be brought or maintained in any court
for the purpose of restraining the assessment or collection of any tax.	if such suit, action or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or

> collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment * * *.

This Court has consistently held that despite the apparently unconditional terms of R. S. §3224, injunctions against the collection of a tax may issue in proper cases. The latest expression of the Court on the point is found in *Miller v. Standard Nut Margarine Company* (1932), 284 U. S. 498, 509, where the Court said:

> "The section does not refer specifically to the rule applicable to cases involving exceptional circumstances. The general words employed are not sufficient, and it would require specific language undoubtedly disclosing that purpose, to warrant the inference that Congress intended to abrogate that salutary and well established rule. * * * It has never held the rule to be absolute, but has repeatedly indicated that extraordinary and exceptional circumstances render its provisions inapplicable. * * *
>
> " * * * It requires no elaboration of the facts found to show that the enforcement of the Act against respondent would be arbitrary and oppressive, would destroy its business, ruin it financially and inflict loss for which it would have no remedy at law. It is clear that, by reason of the special and extraordinary facts and circumstances, Sec. 3224 does not apply."

See also Hill v. Wallace (1922), 259 U. S. 44, 62; Dodge v. Osborn, (1916), 240 U. S. 118, 121.

Section 21(a) was included in the amendment to the Act of August 24, 1935, after numerous suits to restrain the collection of the tax had been filed throughout the country in which the contention was made that the supposed tax was in fact no tax at all but a penalty. *e.g., Penn v. Glenn,* 10 Fed. Supp. 483, 484 (April 13, 1935); F. G. Vogt & Sons, Inc. v. Rothensies, 11 Fed. Supp. 225, 230 (July 17, 1935); Armour & Company v. Harrison (not yet reported, District Court, Northern District of Illinois), in which the Court said in connection with R. S. §3224:

> "Merely to call this exaction a tax does not make it a tax. It is not levied for governmental purposes; therefore, it is not a tax. Therefore, the statute has no application to it."

The obvious purpose of Congress in including this section in the amendment was to make certain its intention that the principle of R. S. §3224 should apply to suits brought to restrain collection of these particular taxes. Having expressed its intention in words practically identical with those used in R. S. §3224, the amendment must be interpreted in the light of the well settled rule that, when a statute is reenacted in the same words as a previous statute which has received a judicial interpretation, the re-enacted statute includes the previous judicial interpretation. Louisville Cement Co. v. Interstate Commerce Commission (1918), 246 U. S. 638, 644.

Further it must be interpreted in the light of the

rule that a statute, susceptible of two constructions, should be construed in such a way as not to raise doubts as to its constitutionality. *Panama R. R. Co. v. Johnson* (1924), 264 U. S. 375; *Michaelson v. United States* (1924), 266 U. S. 42. As will be pointed out hereafter, to interpret this statute in the manner in which it has been interpreted below would raise grave doubts as to its constitutionality.

Interpreting these statutes as not forbidding injunctive relief in *all* cases we may pass to a discussion of whether extraordinary and exceptional circumstances exist in this case such as would render them inapplicable.

Point B

Section 21(d) of the Agricutural Adjustment Act Deprives Petitioner of Its Remedy at Law.

Section 21(d)* forbids the return of any taxes illegally collected under the Act unless the taxpayer proves, to the satisfaction of the Commissioner, that neither the taxpayer nor any person directly or indirectly under his control has, directly or indirectly, included the amount of the tax or any part thereof in the price of the commodity with respect to which it was imposed, or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner or included any part of such amount in the charge or fee

*Printed in the appendix.

for processing, and that the price paid by the taxpayer for the commodity was not reduced by any part of the tax paid. This, obviously, was an attempt to enact into law the economic theory that the burden of any tax imposed upon a manufacturer or processor is ultimately passed on to others. In speaking of a sales tax, Mr. Justice Stone and Mr. Justice Brandeis, dissenting in *Indian Motorcycle Company v. U. S.* (1931), 283 U. S. 570, 581, said:

> "In the Panhandle Oil Case, it was held that this shifting of the burden of a State tax from the seller to the buyer was sufficient to render the tax invalid where the buyer was an agency of the United States, and it was assumed that the burden of the sales tax involved was so inevitably passed on to the buyer as to require this result. With this assumption economists would not, I believe, generally agree. Many hold that whether the burden of any tax paid by the seller is actually passed on to the buyer depends upon considerations so various and complex as to preclude the assumption *a priori* that any particular tax at any particular time is passed on. In some conditions of the market, the burden remains with the seller, or even may be shifted back from the seller to the producer by the reduction of the producer's price, rather than forward to the consumer by an increase of the seller's price."

Likewise Mr. Justice Holmes speaking for the full Court in *Lash's Products Company v. U. S.* (1929), 278 U. S. 175, 176, said:

> "The phrase 'passed the tax on' is inaccurate, as obviously the tax is laid and remains on the

> manufacturer and on him alone. Heckman & Co. v. I. S. Dawes & Son Co., 12 F. (2d) 154. The purchaser does not pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all."

A sales tax is of course easily identifiable, or capable of identification, because levied on the sale of a given identifiable object and based upon the price at which the object is sold. If the question of whether such a tax has been "passed on" is so debatable, how much more so must be the case of a tax, such as a processing tax, which is carried as a part of the processor's expenses of operation? Even more complicated is the situation when, as here, the price paid to the producer and by the consumer fluctuates from day to day on competitive markets influenced by complex and manifold economic factors. However, whatever the merits of the theory *qua* theory, there can be no question that in order to make *factual proof* as to whether a processing tax has been "passed on" it must be shown that the price to the vendee has been increased *because* of the tax, or that the price paid to the producer has been reduced *because* of the tax. When a commodity, such as rice, is bought and sold on competitive markets such proof can be made only by proving what the market *would have been* had there been no tax. This Court held in *International Harvester Company v. Kentucky* (1914), 234 U. S. 216, 223, that the determination of what the market price of a given article would have been under different cir-

cumstances "is a problem that no human ingenuity could solve," and that:

> "The reason is not the general uncertainties of a jury trial but that the elements necessary to determine the imaginary ideal are uncertain both in nature and degree of effect to the acutest commercial mind. The very community, the intensity of whose wish relatively to its other competing desires determines the price that it would give, has to be supposed differently organized and subject to other influences than those under which it acts. * * *
>
> " * * * To compel them to guess on peril of indictment what the community would have given for them if the continually changing conditions were other than they are, to an uncertain extent; to divine prophetically what the reaction of only partially determinate facts would be upon the imaginations and desires of purchasers, is to exact gifts that mankind does not possess."

The situation involved in this case is many times more complex than that in the case just referred to. The manner in which the rice milling business is conducted is too complicated to set out in the confines of this brief but is fully set out in the petition and affidavits in support thereof. (R. 16-21, 60-75.) Because of the manner in which the rice milling business is, and must be, conducted it is impossible for a miller to tell accurately whether he has made a profit or loss with respect to the purchase, milling, and sale of a given lot of rough rice. (R. 62.) He can make a book figure with regard to any such lot

of rice by the use of averages, estimates, and arbitraries but that is all. He can only tell, at the end of the season, whether he has made a gain or loss on the season's operations. (R. 62.) The processing tax is levied upon each lot of rice based upon its weight at the time it reaches the mill and in order to recover the tax paid on such rice, under the provisions of Sec. 21(d), the miller must prove that he did not "pass on" the tax with respect to that particular lot of rice. Since he cannot even determine whether he made a profit or a loss on the particular transaction, it is manifestly impossible for him to know, much less prove, whether he has passed the tax on. However, even if he were able to prove exactly the amount of profit he made on each transaction, he would still have proved nothing but that. For all that he, or anyone else, could know he might have been able to sell the particular lot of rice for exactly the same price even if there had been no tax and he might have been able to purchase it for exactly the same price had there been no tax. On the face of it such matters are incapable of proof or even a sound guess. The miller cannot control the market on which he buys nor that on which he sells but he is compelled to buy and sell on those markets if he is to stay in the rice milling business. This lack of control of the markets by the miller is illustrated by the fact that the present cost of rough rice, plus operatings costs, including tax, is more than the miller can reasonably expect to get out of the products processed from it on the present market

for clean rice and rice products. (R. 62.) Manifestly under such circumstances no one can know, much less prove, whether the ultimate burden of the tax has fallen on the producer, the miller, or the purchaser. An analogous situation arises where a trademark has been infringed and the question arises as to how much of the sales price received by the infringer is attributable to the use of the trademark and how much to the intrinsic value of the object sold. In *Hamilton Shoe Company v. Wolf Bros.* (1916), 240 U. S. 251, 260, this Court held that in such a case it would, in the very nature of things, be impossible to ascertain to what extent the infringer could have effected sales and at what prices except for the use of the trademark. The same principle is applicable here—it is inherently impossible, in the circumstances of this case, for petitioner, or any other rice miller, to ascertain or prove to what extent he could have "effected sales and at what prices" except for the existence of the processing tax.

More than a thousand suits to enjoin the collection of these taxes have been filed throughout the United States. Insofar as petitioner knows the government has never yet been able to suggest *how* the proof required by the statute can be made. The government has satisfied itself with the simple assertion that proof *can* be made and with citing the opinion of this Court in *United States v. Jefferson Electric Manufacturing Company* (1934), 291 U. S. 386, 402, where the Court said:

"If the taxpayer has borne the burden of the tax, he can readily show it." * * *

The tax involved in that case was a tax upon the *sale* of a definite determinable object and amounted to 5% of the price for which the object was sold. The tax was not upon the manufacture, or the manufacture *and* sale. *Indian Motor Cycle Company v. United States* (1931), 283 U. S. 570, 574. In determining whether the payer of the tax collected it from the vendee or paid it himself there were no such complications as here exist. Indeed it was not suggested by anyone that the required proof could not be made; only that the taxpayer should not have to make it because the tax involved in the suit had been paid prior to the passage of the Act and at a time when it would not have been necessary for the payer to make such proof to procure refund. (P. 401.) The present case came before the Circuit Court of Appeals on a *final judgment dismissing the bill* on motion of the respondent which admitted the allegation that the proof required by the Act was impossible of being made. Nevertheless, and in the face of this, the Circuit Court of Appeals held that petitioner had "a" remedy at law (nothing being said as to the *adequacy* of it). Petitioner asserts that on the face of the Act, considering the *kind* of tax involved, an impossible burden of proof is placed upon petitioner. Petitioner further asserts that even if this were not true the Courts below should have enjoined the collection of the tax until such time as the courts could make a finding upon the

fact question of whether, under the peculiar conditions of the rice milling industry, the proof could be made. Respondent has not denied the allegations of petitioner's bill in this respect and under the circumstances the Court should not have dismissed the bill but was under the plain duty of preserving the *status quo* until such time as the facts upon which petitioner's constitutional rights depended could be fully determined. *cf Ohio Oil Company v. Conway* (1929), 279 U. S. 813.

Besides the lack of any adequate remedy at law this case presents several other grounds for equitable relief which have been held sufficient by this Court for the enjoining of the collection of a tax:

1. Multiplicity of suits (R. 23). *Wilson v. Illinois Southern Railroad* (1924), 263 U. S. 574; *Raymond v. Chicago Union Traction Company* (1907), 207 U. S. 20.

2. Congress has made no appropriation to repay any of these taxes if illegally collected, even if an adequate remedy at law were available, and in view of the tremendous amount involved it is improbable that any such appropriation will be made. (R. 24.) *Stewart Dry Goods Company v. Lewis* (1932), 287 U. S. 9.

3. The statute purporting to give the legal remedy has never been interpreted by the Courts and for this reason, if no other, petitioner's remedy at law cannot be said to be adequate. *Atlantic Coast Line v. Daughton* (1923), 262 U. S. 413. *cf Union Pacific Railroad v. Weld County* (1917), 247 U. S. 282.

4. The existence of the heavy civil and criminal penalties provided by Section 19(b) of the

Act*. (R. 15.) *Ex Parte Young* (1908), 209 U. S. 123, 146; *Wallace v. Hines* (1920), 253 U. S. 66.

POINT C

Unconstitutionality of R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act Under the Circumstances of This Case.

The argument is made that the District Courts and Circuit Courts of Appeals, not being constitutional courts, may be completely abolished by Congress and therefore Congress may place any desired restriction on their jurisdiction. The answer to this is that Congress has not abolished the District Courts nor the Circuit Courts of Appeals and not having abolished them the Congress may not constitutionally deprive one class of citizens of the right to equitable relief therein while at the same time and under similar circumstances other taxpayers are permitted to obtain such relief. Persons other than those subject to the processing tax from whom illegal taxes are sought to be collected may enjoin their collection under special and extraordinary circumstances. *Hill v. Wallace, supra; Miller v. Standard Nut Margarine Company, supra.* The right to protect one's property by invoking the aid of courts is as much a property right as the property itself, and to deny one class of citizens this right while granting it to others under similar circumstances

*The applicable penalty provisions are copied in Appendix C hereto.

is to deprive the class so denied of its property without due process of law. In *Truax v. Corrigan* (1921), 257 U. S. 312, which involved an Arizona statute which forbade the issuance of injunctions to protect property rights in cases of labor disputes the contention was made in support of the validity of the statute that the State could have completely abolished the lower courts and therefore the State could put such limitations as it desired upon their jurisdiction. This court nevertheless held the statute violative of the Fourteenth Amendment. Since the validity of exertions by the Federal Government of any of its delegated powers under the Fifth Amendment are to be measured by the same standards by which exertions of State power are measured under the Fourteenth Amendment, *Hamilton v. Kentucky Distilleries Co.* (1919), 251 U. S. 146, 156, it would seem clear that R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act are unconstitutional if they be construed as depriving courts of jurisdiction to issue injunctions to protect property rights in tax cases where the taxpayer is without remedy, or at least adequate remedy, at law.

In *Brinkerhoff-Faris Trust & Savings Company v. Hill* (1930), 281 U. S. 673, the Supreme Court of Missouri held that the trial court properly dismissed a bill seeking to enjoin the illegal assessment and collection of taxes on the ground that the taxpayer should first have pursued remedies before the State Board of Equalization. That court had

previously held that the State Board of Equalization was without jurisdiction to hear such complaints. The effect of the second decision was to deprive the petitioner of all right to test the validity of the tax. This court held that this amounted to a deprivation of petitioner's property without due process of law, Mr. Justice Brandeis saying:

> "Whether acting through its judiciary or through its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it."

This language is exactly applicable to the instant case and seems conclusive that if R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act be construed as forbidding injunctive relief in this case they are unconstitutional. See also *Graham & Foster v. Goodcell* (1931), 282 U. S. 409, 430, 431.

However absolute the power of Congress to destroy the jurisdiction of the inferior Federal Courts may seem, it is no more absolute than the apparent power of the State to arbitrarily exclude a foreign corporation from doing business within its borders. Nevertheless, this court has held, *Fidelity & Deposit Company v. Tafoya* (1926), 270 U. S. 426, that this "most absolute seeming" right was qualified and in some circumstances could become wrong, and that despite this apparently unqualified right the State could not impose an unconstitutional condition upon the foreign corporation coming into the

State. The exercise of Congress's right to limit the equity jurisdiction of the lower Federal Courts in the granting of injunctions in tax cases such as the present would be, as in the case just cited, for the purpose of securing a result forbidden by the Fifth Amendment, i. e., the deprivation of petitioner's property without due process of law, and may not stand.

There is still another reason why these statutes, if construed to absolutely and in all cases forbid injunctions, are unconstitutional. The Constitution, Article III, Section 1, vests the judicial power of the United States in one Supreme Court and such inferior courts as the Congress may from time to time ordain and establish. By Section 2 of Article III this judicial power extends to all cases in law and *equity* arising under the Constitution and laws of of the United States. Congress having established the District Courts and the Circuit Courts of Appeals, they, by virtue of the Constitution, at once become vested with judicial power in all cases arising under the Constitution and laws of the United States. These inferior courts derive their *judicial power* from the Constitution and not from any act of Congress. Congress may well have the power to regulate the procedure in these courts and to define their jurisdiction but Congress may not, it is submitted, deprive the courts of their *inherent judicial powers* which naturally follow from the Constitutional grant of those powers. This was expressly held in *Michaelson v. United States*

(1924), 266 U. S. 42, 64, 65, 66, where the court said:

> *"If the statute now under review encroaches upon the equity jurisdiction intended by the Constitution, a grave constitutional question in respect of its validity would be presented;* and it, therefore, becomes our duty, as this Court has frequently said, to construe it 'if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score.' Panama R. R. Co. v. Johnson, 264 U. S. 375.
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> * * *
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> "But it is contended that the statute materially interferes with the inherent power of the courts and is therefore invalid. That the power to punish for contempts is inherent in all courts, has been many times decided and may be regarded as settled law. It is essential to the administration of justice. *The courts of the United States, when called into existence and vested with jurisdiction over any subject, at once become possessed of the power.* So far as the inferior Federal Courts are concerned, however, it is not beyond the authority of Congress (*Ex parte* Robinson, 19 Wall. 505, 510-511; Bessette v. W. B. Conkey Co., 194 U. S. 324, 326); *but the attributes which inhere in that power and are inseparable from it can neither be abrogated nor rendered practically inoperative.* That it may be regulated within limits not precisely defined may not be doubted. The statute now under review is of the latter character."

The power of courts of equity to issue injunctions to protect property rights, which could not otherwise be protected, is quite as inherent as the power

to punish for contempt. Conceding the authority of Congress to regulate or limit the use of the power, to an undefined extent, the case here presents no such situation, for to interpret the acts as depriving the courts of the power to issue injunctions in *every case* involving the collection of the tax, would be to completely destroy one of the inherent powers of the court which it possesses by virtue of Section 2 of Article III of the Constitution. For these reasons petitioner submits that R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act, so construed, are unconstitutional.

Point D

Unconstitutionality of Summary Proceedings for Collection of the Tax.

Under Sections 115 to 131, Title 26, U. S. C., as amended,* which are incorporated into the present Act, the Commissioner is authorized to collect the taxes, upon non-payment, by the fixing of liens on all of petitioner's property or by the levying of distraints against petitioner's property, including bank accounts, etc. The procedure is summary and under the distraint proceedings it would be entirely possible for the Commissioner to collect the full tax alleged to be owed by petitioner before petitioner could even know any proceedings had been started to collect the tax. All that would be necessary would be for the Commissioner or a deputy to walk

*Printed in Appendix B.

to petitioner's bank with the proper papers and distrain petitioner's money there deposited. The constitutionality of this summary procedure was upheld in *Phillips v. Commissioner* (1931), 283 U. S. 589, 596, upon the express ground that under existing statutes the taxpayer was given ample opportunity to ultimately test the liability for the tax in a court of law, the court saying:

> "Where only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, *if the opportunity given for the ultimate judicial determination of the liability is adequate.* Springer v. United States, 102 U. S. 586, 593; Scottish Union & National Ins. Co. v. Bowland, 196 U. S. 611, 631."

Under the facts of this case plaintiff is deprived of all legal remedy to recover the tax collected, if it be held illegal, because of the impossible burden of proof petitioner would have to meet in such a suit and, if R. S. §3224 and Sec. 21(a) be so construed, petitioner is deprived of the right to test the validity of the tax by a suit for an injunction. To permit the government to summarily seize petitioner's property under these circumstances would be to deprive petitioner of his property without due process of law and to argue this further would be to argue the obvious. See, in addition to the case cited, *Lipke v. Lederer* (1922), 259 U. S. 557, 562; *Carpenter v. Shaw* (1930), 280 U. S. 363, 369; *Ward v. Love County* (1920), 253 U. S. 17.

Point E

The Agricultural Adjustment Act, as Amended, Is Unconstitutional.

Petitioner asserts that the Agricultural Adjustment Act, as amended, is unconstitutional for the following reasons:

1. The Act, though in form a revenue measure, is in fact an attempt to regulate the price at which petitioner buys and sells rice in intrastate commerce.

2. The Act is an attempt to control the production of agricultural commodities within the several States.

3. The taxes are not levied for the general welfare or for a public purpose.

4. The Act, as amended, contains an unconstitutional delegation of legislative power to the Secretary of Agriculture.

Section 2(1) of the Act declares the policy of the Act to be "to establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. * * *" The rice miller is still compelled to pay the market price for all rice bought from farmers, and in addition thereto he is compelled to pay $1.62 per barrel

on the rice so purchased, which $1.62 in turn is given to the farmer under the guise of benefit payments. The object is to raise the price to the farmer and that object is obtained in part, at least, by compelling petitioner to pay at least $1.62 per barrel more for his rice than he would otherwise have to pay. Since the purchase is wholly within intrastate commerce, it is unquestionably beyond the power of the Federal Government to control. *Hill v. Wallace* (1922), 259 U. S. 44; *Schechter Poultry Corporation v. United States* (1935), 295 U. S. 495; *Butler v. United States of America* (C. C. A., First, 1935), 78 Fed. (2nd) 1. Congress being without power by direct regulation to fix or control these prices, it cannot achieve the same result by casting a law having that purpose into the form of a revenue measure. *Child Labor Tax Case* (1922), 259 U. S. 20; *Hill v. Wallace, supra; Hammer v. Dagenhart* (1918), 247 U. S. 251.

Secondly, the Act attempts to control and reduce the production of agricultural commodities by farmers within the several States. In Section 8(1) the Secretary of Agriculture is authorized

> "to provide for reduction in the acreage or reduction in the production for market, or both, of any basic agricultural commodity, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith or upon that part of the production of any basic agricultural commodity required for domestic consumption, such amounts as the Secretary deems fair and reasonable." * * *

Of all industries, agriculture is the most essentially intrastate, and this has long been recognized by this Court. *Kidd v. Pearson* (1888), 128 U. S. 1, 21; *Heisler v. Thomas Colliery Company* (1922), 260 U. S. 245, 259; *Industrial Association v. United States* (1925), 268 U. S. 64, 82. Since the Act has for its purpose the regulation of this purely intrastate matter, *Schecter Poultry Corporation v. U. S., supra; Hill v. Wallace, supra,* the tax levied to effectuate this purpose must fall. *Child Labor Tax Case, supra; Railroad Retirement Board v. Alton Railroad Company* (1935), 295 U. S. 330; *Gibbons v. Ogden* (1824), 9 Wheat. 1, 199.

The fact that the arrangements between the Secretary of Agriculture and the individual farmers by which the latter reduce their acreage and the former makes benefit payments to them therefor out of the taxes collected from processors does not make the Act in purpose and effect any the less a regulation of agriculture within the State. *cf. Schecter Poultry Corporation v. U. S., supra,* p. 529. The arrangements are made by virtue of, and under authority of, the law, and it is idle to say that the act of the farmer in reducing his acreage pursuant to the contract with the Secretary of Agriculture is voluntary when the farmer knows that if he does not execute such agreement he is subjected to the penalty of having to sell his commodity at the same price at which other farmers sell it minus the substantial amount received by the other farmers by way of benefit payments. (R. 41.) Further-

more, without the tax provisions in the Act (which are certainly not voluntary) the enormous benefit funds with which to coerce the farmers into making the "voluntary" agreements would not be available and the result sought to be achieved by Congress, to wit, the regulation of agriculture within the several States, could not be accomplished.

Third, it seems plain that these taxes are not levied for the general welfare or a public purpose, as required by Article I, Section 8, Clause 1, of the Constitution. It is plain from the face of the Act that it is an attempt to redistribute purchasing power and the taxes provided by the Act are to be used solely for that purpose. Under Section 12(b) of the Act it is provided that "* * * for the purpose of effectuating the declared policy of this title, a sum equal to the proceeds derived from *all taxes* imposed under this title is hereby appropriated to be available to the Secretary of Agriculture * * *." That a tax cannot be levied on A for the purpose of paying a bounty to B was long ago held by this court in *Loan Association v. Topeka* (1874), 87 Wall. 655, 663, where Mr. Justice Miller said:

> "The power to tax is, therefore, the strongest, the most pervading of all the powers of the government, reaching directly or indirectly to all classes of the people. It was said by Chief Justice Marshall, in the case of McCullough v. The State of Maryland, that the power to tax is the power to destroy. A striking instance of the truth of the proposition is seen in the fact that the existing tax of ten per cent imposed by the United States on the circula-

> tion of all other banks than the National banks, drove out of existence every State bank of circulation within a year or two after its passage. This power can as readily be employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited wealth and prosperity to the other, if there is no implied limitation of the uses for which the power may be exercised."

It has been urged that the tax is constitutional because a favorable readjustment of the farmers' economic condition will ultimately redound to the general public good. The same sort of an argument was made to the court in *Loan Association v. Topeka, supra,* but the court rejected it, saying at page 665:

> "If it be said that a benefit results to the local public of a town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the innkeeper, the banker, the builder, the steamboat owner are equally promoters of the public good, and equally deserving the aid of the citizens by forced contributions."

While many assert that our economic difficulties are attributable to the condition of the farmer, there are still others who attribute it to the condition of the manufacturers or the condition of our export trade. If a tax can be levied to pay a bounty to farmers no reason is perceived why a tax may not be constitutionally levied to pay bounties to manu-

facturers or to those engaged in export trade or those engaged in any of our basic industries.

Finally, the processing tax provisions (Sec. 9),* even as altered by the amendment of August 24, 1935, violate Article I, Section 1, of the Constitution in making an unlawful delegation of legislative power to the Secretary of Agriculture. While the amendment provides for an initial processing tax on rice of 1c per pound (or $1.62 per barrel), nevertheless, under Sec. 9 the Secretary is given full power at any time to reduce, increase, modify or eliminate the tax, not by any practical standard, but largely by his opinion or prophecy of future prices and conditions. Where all such questions as to the duration of the tax and its increase or decrease or elimination are thus left to be resolved by the Secretary of Agriculture alone, it is clear that the Act still runs counter to Article I, Section 1, and is therefore unconstitutional. *Schechter Poultry Corporation, supra; Panama Refining Co. v. Ryan* (1934), 293 U. S. 388.

POINT F

Certiorari Should Be Granted at the Present Time.

The opinion and order of the Circuit Court of Appeals, while interlocutory in form, in truth and in fact finally disposed of the case upon the merits. When it held that petitioner had a remedy at law and that the Courts below were without jurisdiction to grant the injunction prayed for (R. 98) the result

*Set out in Appendix D.

was a denial of all the relief sought by petitioner. Since the case will not come up for a hearing on its merits in the ordinary course of events until after the lapse of six or seven months the subject of the suit will be destroyed, the case become moot, and petitioner deprived of all right to have its case heard on the merits by any court unless this Court grants certiorari. If the order of the Circuit Court of Appeals is allowed to stand all the trial courts in the Circuit will feel bound thereby and will of necessity dismiss all bills filed in the Circuit for the purpose of testing the constitutionality of the taxes levied by the Agricultural Adjustment Act, as amended, with the result that not only your petitioner, but all other citizens living within the States of Texas, Louisiana, Mississippi, Alabama, Georgia and Florida be effectively deprived of any opportunity of testing the validity of this statute. There can be no question but that the constitutional questions raised in this case are grave and of national importance and this case involves an unprecedented situation. That the action of the Circuit Court of Appeals in denying the motion for an injunction to preserve the *status quo* pending appeal was wrong is plainly indicated by the fact that its action is contrary to the action of the Circuit Courts of Appeals for the Second, Sixth, Eighth, Ninth and Tenth Circuits, in granting injunctions in similar cases. It stands alone, unsupported by the decision of any other circuit. Its error can be corrected only by this Court now granting certiorari since there is

now before this Honorable Court a cause involving the constitutionality of the Agricultural Adjustment Act, which said cause is set for oral argument on December 9, 1935, and which will in the ordinary course of events be decided long prior to the time when this case would come up for hearing in the Circuit Court of Appeals. Without a writ of certiorari from this Honorable Court petitioner will have been compelled meanwhile to pay the taxes and if the Act be held unconstitutional its case would become moot and the taxes paid by it probably forever lost.

While the power to bring up a case pending in the Circuit Court of Appeals prior to final action in that Court is one to be sparingly exercised, the power nevertheless exists. *American Construction Company v. Jacksonville Railway* (1893), 148 U. S. 372. This Court said in *In Re Chetwood* (1897), 165 U. S. 443, 462:

> "And although, as observed in that case, this writ has not been issued as freely by this court as by the Court of Queen's Bench in England, and, prior to the Act of March 3, 1891, C. 517, 26 Stat. 826, had been ordinarily used as an auxiliary process merely, yet, whenever the circumstances imperatively demand that form of interposition the writ may be allowed, as at common law, to correct excesses of jurisdiction *and in furtherance of justice.*"

Likewise in *Harriman v. Northern Securities Company* (1905), 197 U. S. 244, 286, where the decree of the Circuit Court of Appeals actually dis-

posed of the entire case, although interlocutory in form, this Court granted certiorari. Other cases in which this Court has granted certiorari prior to a final decree in the Circuit Court of Appeals are *Denver v. New York Trust Company* (1913), 229 U. S. 123, 133; *Spiller v. Atchison, T. & S. F. Railway Company* (1920), 253 U. S. 117, 120; and *Dupont Powder Company v. Mastland* (1917), 244 U. S. 100. And in *The Three Friends* (1897), 166 U. S. 1, 49, this Court reviewed a decision of the District Court prior to action by the Circuit Court of Appeals on the appeal pending therein.

CONCLUSION

It is therefore respectfully submitted that this case is such as to call for the exercise by this Court of its supervisory powers. If the decisions of the District Court and the Circuit Court of Appeals stand, the result will be that petitioner will be deprived of its property without due process of law, and will be so deprived without any opportunity to test in the Courts the constitutional rights asserted in its bill of complaint. Unless this Honorable Court exercises such supervisory powers prior to the entry of a final decree in the Circuit Court of Appeals the subject matter of the suit will be destroyed, the suit become moot, and petitioner forever deprived of its constitutional rights. This Court should, therefore, review forthwith the decision of

the United States Circuit Court of Appeals for the Fifth Circuit and the decision of the District Court of the United States for the Eastern District of Louisiana.

Respectfully submitted,

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APPENDIX A

R. S. ART. 3224

No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

* * *

SECTION 21 OF AGRICULTURAL ADJUSTMENT ACT

SEC. 21 (*a*) No suit, action, or proceedings (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (*d*) of this section, may be reserved in the court's order.

(*b*) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regu-

lations of the Secretary with the approval of the President prior to the date of the adoption of this amendment, are hereby legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which have accrued and remain unpaid on the date of the adoption of this amendment shall be assessed and collected pursuant to Section 19, and to the provisions of law made applicable thereby. Nothing in this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary of Agriculture or of the President done or made prior to the date of the adoption of this amendment.

(*c*) The making of rental and benefit payments under this title, prior to the date of the adoption of this amendment, as determined, prescribed, proclaimed and made effective by the proclamations of the Secretary of Agriculture or of the President or by regulations of the Secretary, and the initiation, if formally approved by the Secretary of Agriculture prior to such date of adjustment programs under Section 8 (1) of this title, and the making of agreements with producers prior to such date, and the adoption of other voluntary methods prior to such date, by the Secretary of Agriculture under this title, and rental and benefit payments made pursuant thereto, are hereby legalized and ratified, and the making of all such agreements and payments, the initiation of such programs, and the adoption of all such methods prior to such date are hereby legalized, ratified, and confirmed as fully to all intents and purposes as if each such agreement, program, method, and payment had been specifically author-

ized and made effective and the rate and amount thereof fixed specifically by prior Act of Congress.

(*d*) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considerd by the court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (*a*) or (*c*) of Section 15, Section 16, or Section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of Section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by rea-

son of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be refunded or credited to any person (not a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (*a*) and (*b*) of Section 16, had the tax terminated by proclamation pursuant to the provisions of Section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish to the satisfaction of the Commissioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held

invalid a claim therefor (conforming to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2) no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, or jurisdiction of such courts based upon the amount in controversy.

(*e*) In connection with the establishment, by any claimant, of the facts required to be established in subsection (*d*) of this section, the Commissioner of Internal Revenue is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda, relative to any matter affecting the findings to be made by the Commissioner pursuant to subsection (*d*) of this section, to require the attendance of the claimant or of any officer or employee of the claimant, or the attendance of any other person having knowledge in the premises, and to take, or cause to be taken, his testimony with reference to any such matter, with power to administer oaths to such person or persons. It shall be lawful for the Commissioner, or any collector designated

by him, to summon witnesses on behalf of the United States or of any claimant to appear before the Commissioner, or before any person designated by him, at a time and place named in the summons, and to produce such books, papers, correspondence, memoranda, or other records as the Commissioner may deem relevant or material, and to give testimony or answer interrogatories, under oath, relating to any matter affecting the findings to be made by the Commissioner pursuant to subsection (*d*) of this section. The provisions of Revised Statutes 3174 and of Revised Statutes 3175 shall be applicable with respect to any summons issued pursuant to the provisions of this subsection. Any witness summoned under this subsection shall be paid, by the party on whose behalf such witness was summoned, the same fees and mileage as are paid witnesses in the courts of the United States. All information obtained by the Commissioner pursuant to this subsection shall be available to the Secretary of Agriculture upon written request therefor. Such information shall be kept confidential by all officers and employees of the Department of Agriculture, and any such officer or employee who violates this requirement shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both, and shall be removed from office.

(*f*) No refund, credit, or abatement shall be made or allowed of the amount of any tax, under Section 15, or Section 17, unless, within one year after the right to such refund, credit, or abatement has accrued, a claim for such refund, credit, or abatement (conforming to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled to such refund, credit, or abatement, except that if the right to any such refund, credit, or abatement accrued prior to the date of the adoption of this amendment, then

such one-year period shall be computed from the date of this amendment. No interest shall be allowed or paid, or included in any judgment, with respect to any such claim for refund or credit.

(*g*) The provisions of Section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax, or any refund or credit authorized by subsection (*a*) or (*c*) of Section 15, Section 16, or Section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of Section 317 of the Tariff Act of 1930.

APPENDIX B

Provisions of Title 26, U. S. C. Dealing With Collection of Taxes By Distraint

Sec. 115. *Lien for Taxes.* (*a*) If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. (Balance of Section deals with recording of lien and giving of releases.) (R. S. Sec. 3186; Mar. 1, 1879, C. 125, Sec. 3, 20 Stat. 331; Mar. 4, 1913, C. 166, 37 Stat. 1016; Feb. 26, 1925, C. 344, 43 Stat. 994; May 29, 1928, 8 a.m., C. 852, Title IV, Sec. 613, 45 Stat.)

116. *Distraint for Taxes.* If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with 5 per centum additional thereto, and interest as aforesaid, by distraint and sale, in the manner hereafter provided, of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid. (Balance of Section deals with exempt property.) (R. S. Sec. 3187; June 2, 1924, 4:01 p.m., C. 234, Sec. 1016, 43 Stat. 343.)

117. *Same; Levy.* In such case of neglect or refusal, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property

and rights to property, except such as are exempt by Section 116 of this title, belonging to such person, or on which the said lien exists, for the payment of the sum due as aforesaid, with interest and penalty for nonpayment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy. (R. S. Sec. 3188.)

118. *Same; Exhibit of Evidences Relating to Property.* All persons, and officers of companies or corporations, are required, on demand of a collector or deputy collector about to distrain or having distrained on any property, or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the tax due as aforesaid. (R. S. Sec. 3189.)

119. *Same; Proceedings On.* When distraint is made, as aforesaid, the officer charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the officer making such distraint, shall be left with the owner or possessor or such goods or effects, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded, and the time and place of sale; and the said officer shall forthwith cause a notification to be published in some newspaper within the county wherein said distraint is made, if a newspaper is published in said county, or to be publicly posted at the post office, if there be one within five miles nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Such notice shall specify the articles distrained, and the time and place for the sale thereof. Such time shall not be less than ten nor more than twenty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notice as herein

provided, and the place proposed for the sale shall not be more than five miles distant from the place of making such distraint. Said sale may be adjourned from time to time by said officer, if he deems it advisable, but not for a time to exceed in all thirty days. (R. S. Sec. 3190.)

120. *Same; Sale of Property Subject to Tax.* When property subject to tax, but upon which the tax has not been paid, is seized upon distraint and sold, the amount of such tax shall, after deducting the expenses of such sale, be first appropriated out of the proceeds thereof to the payment of the tax. And if no assessment of such tax has been made upon such property, the collector shall make a return thereof in the form required by law, and the Commissioner of Internal Revenue shall assess the tax thereon. (R. S. Sec. 3191.)

121. *Same; Sale of Property; Purchase for United States.* When any personal property is advertised for sale under distraint as aforesaid, the officer making the seizure shall proceed to sell such property at a public auction, offering the same at a minimum price, including the expenses of making the levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the officer conducting the sale may declare the same to be purchased by him for the United States. The property so purchased may be sold by the collector within whose district the sale was made under such regulations as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. The collector shall render to the Commissioner a distinct account of all charges incurred in such sales, and, in case of resale, shall pay into the Treasury the proceeds as provided in Section 3210 of the Revised Statutes, as amended (R. S. 3192, as amended May 10, 1934, 11:40 a.m., C. 277, Sec. 508, 48 Stat.)

122. *Same; Restoration of Property on Payment Before Sale.* (This merely provides for return of property distrained upon if tax is paid prior to sale.) (R. S. 3193.)

123. *Same; Effect of Certificate of Sale.* In all cases of sale, as aforesaid, the certificate of such sale shall be prima-facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale, and shall transfer to the purchaser all right, title, and interest of such delinquent in and to the property sold; and where such property consists of stocks, said certificate shall be notice, when received, to any corporation, company, or association of said transfer, and shall be authority to such corporation, company, or association to record the same on their books and records in the same manner as if transferred or assigned by the party holding the same, in lieu of any original or prior certificates, which shall be void, whether canceled or not. And said certificates, where the subject of sale is securities or other evidences of debt, shall be good and valid receipts to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt. (R. S. Sec. 3194.)

124. *Same; When Property Not Divisible.* (This deals with special case of indivisible property and allows sale of the whole even though its value exceeds amount of the tax. (R. S. Sec. 3195; June 2, 1924, 4:01 p.m., C. 234, Sec. 1031 (*a*), 43 Stat. 351; re-enacted Jan. 26, 1926, 10:25 a.m., C. 27, Title XI, Sec. 1128(a), 144 Stat. 124.)

125. *Real Estate; Sale to Satisfy Taxes.* When goods, chattels, or effects sufficient to satisfy the taxes imposed upon any person are not found by the collector or deputy collector, he is authorized to collect the same by seizure and sale of real estate. (R. S. Sec. 3196.)

126. *Same; Proceedings.* The officer making the seizure mentioned in Section 125 of this title shall give notice to the person whose estate it is proposed to sell by giving him in hand, or leaving at his last or usual place of abode, if he has any such within the collection district where said estate is situated, a notice, in writing, stating what particular estate is to be sold, describing the same with reasonable certainty, and the time when and place where said officer proposes to sell the same; which time shall not be less than twenty nor more than forty days from the time of giving said notice. The said officer shall also cause a notification to the same effect to be published in some newspaper within the county where such seizure is made, if any such there be, and shall also cause a like notice to be posted at the postoffice nearest to the estate seized, and in two other public places within the county; and the place of said sale shall not be more than five miles distant from the estate seized, except by special order of the Commissioner of Internal Revenue. At the time and place appointed, the officer making such seizure shall proceed to sell the said estate at public auction, offering the same at a minimum price, including the expense of making such levy, and all charges for advertising and an officer's fee of $10. (Balance of section deals with details of conducting sale.) (R. S. Sec. 3197; Feb. 27, 1877, C. 69, Sec. 1, 19 Stat. 248; Mar. 1, 1879, C. 125, Sec. 3, 20 Stat. 331; May 28, 1896, C. 252, 29 Stat. 179; Mar. 3, 1905, C. 1483, Sec. 1, 33 Stat. 1207; July 19, 1919, C. 24, Sec. 1, 41 Stat. 209.)

127. *Same; Certificate of Purchase; Deed.* (This provides for execution of deed by the collector to the purchaser.) (R. S. Sec. 3198.)

128. *Same; Deed Prima-Facie Evidence.* The deed of sale given in pursuance of Section 127 of this title shall be prima-facie evidence of the facts therein stated; and if the proceedings of the officer as set

forth have been substantially in accordance with the provisions of law, shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real estate thus sold at the time the lien of the United States attached thereto. (R. S. Sec. 3199.)

129. *Same; Place of Seizure (and Sale).* Any collector or deputy collector may, for the collection of taxes imposed upon any person, and committed to him for collection, seize and sell any of the property, real or personal (except property exempt from distraint and sale, under Section 3187 of the Revised Statutes, or any right or interest therein, of such person situated in any other collection district within the State in which such officer resides, notwithstanding the provisions of Section 3209 of the Revised Statutes; and his proceedings in relation thereto shall have the same effect as if the same were had in his proper collection district. (R. S. Sec. 3200; amended Jan. 26, 1926, 11:25 a.m., Title XI, Sec. 1129, 44 Stat. 125.)

130. *Same; Redemption Prior to Sale.* (This provides for return of property seized on payment of tax.) (R. S. Sec. 3201.)

131. *Same; Redemption After Sale.* (This provides for redemption after sale by payment to purchaser, within one year after the sale, of the purchase price with interest at 20% per annum.) (R. S. 3202.)

APPENDIX C

Penalty Provisions

Section 19(b) of the Agricultural Adjustment Act:

> "Sec 19. * * * (*b*) All provisions of law, including penalties, applicable with respect to the taxes imposed by Section 600 of the Revenue Act of 1926, and the provisions of Section 626 of the Revenue Act of 1932, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable in respect of taxes imposed by this title: * * * ."

Section 1114 of 1926 Revenue Act, applicable with respect to taxes imposed by Section 600 of that Act:

> "Sec. 1114. (*a*) Any person required under this Act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act, who wilfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisioned for not more than one year, or both, together with the costs of prosecution.
>
> "(*b*) Any person required under this Act to collect, account for and pay over any tax imposed by this Act, who willfully fails to collect or truthfully account for and pay over such tax,

and any person who willfully attempts in any manner to evade or defeat any tax imposed by this Act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

"(c) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal-revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

"(d) Any person who willfully fails to pay, collect, or truthfully account for and pay over, any tax imposed by Titles IV, V, VI, VII, VIII, and IX, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of Section 3176 of the Revised Statutes, as amended, or for any offense for which a penalty has been recovered under Section 3256 of the Revised Statutes.

"(*e*) Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

"(*f*) The term 'person' as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs."

APPENDIX D

PROCESSING TAX PROVISIONS OF AGRICULTURAL ADJUSTMENT ACT, AS AMENDED, AS APPLIED TO RICE

SEC. 9. (*a*) To obtain revenue for extraordinary expenses incurred by reason of the national economic emergency, there shall be levied processing taxes as hereinafter provided. When the Secretary of Agriculture determines that any one or more payments authorized to be made under Section 8 are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation; except that * * * (2) in the case of rice, the Secretary of Agriculture shall, before April 1, 1935, proclaim that rental or benefit payments are to be made with respect thereto, and the processing tax shall be in effect on and after April 1, 1935. * * * In the case of rice, the period from August 1 to July 31, both inclusive, shall be considered to be the marketing year. The processing tax shall be levied, assessed, and collected upon the first domestic processing of the commodity, whether of domestic production or imported, and shall be paid by the processor. The rate of tax shall conform to the requirements of subsection (*b*). Such rate shall be determined by the Secretary of Agriculture as of the date the tax first takes effect, and the rate so determined shall, at such intervals as the Secretary finds necessary to effectuate the declared policy, be adjusted by him to conform to such requirements. The processing tax shall terminate at the end of the marketing year current at the time the Secretary proclaims that all payments authorized under Section 8 which are in effect are to be discontinued with

respect to such commodity. The marketing year for each commodity shall be ascertained and prescribed by regulations of the Secretary of Agriculture: * * *

(*b*) (1) The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, plus such percentage of such difference, not to exceed 20 per centum, as the Secretary of Agriculture may determine will result in the collection, in any marketing year with respect to which such rate of tax may be in effect pursuant to the provisions of this title, of an amount of tax equal to (A) the amount of credits or refunds which he estimates will be allowed or made during such period pursuant to section 15(c) with respect to the commodity (B) the amount of tax which he estimates would have been collected during such period upon all processing of such commodity which are exempt from tax by reason of the fact that such processings are done by or for a State, or a political subdivision or an institution thereof, had such processings been subject to tax. If, prior to the time the tax takes effect, or at any time thereafter, the Secretary has reason to believe that the tax at such rate, or at the then existing rate, on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, will cause or is causing such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depression of the farm price of the commodity, then the Secretary shall cause an appropriate investigation to be made, and afford due notice and opportunity for hearing to interested parties. If thereupon the Secretary determines and proclaims that any such result will oc-

cur or is occurring, then the processing tax on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be at such lower rate or rates as he determines and proclaims will prevent such accumulation of surplus stocks and depression of the farm price of the commodity, and the tax shall remain during its effective period at such lower rate until the Secretary, after due notice and opportunity for hearing to interested parties, determines and proclaims that an increase in the rate of such tax will not cause such accumulation of surplus stocks or depression of the farm price of the commodity. Thereafter the processing tax shall be at the highest rate which the Secretary determines will not cause such accumulation of surplus stocks or depression of the farm price of the commodity, but it shall not be higher than the rate provided in the first sentence of this paragraph. * * *

SPECIFIC TAX RATE—RICE

(3) For the period from April 1, 1935, to July 31, 1936, both inclusive, the processing tax with respect to rice shall be levied, assessed, collected, and paid at the rate of 1 cent per pound of rough rice. * * *

(6) (A) Any rate of tax which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6) on the processing of any commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be decreased (including a decrease to zero) in accordance with the formulae, standards, and requirements of paragraph (1) of

this subsection, in order to prevent such reduction in the quantity of such commodity or the products thereof domestically consumed as will result in the accumulation of surplus stocks of such commodity or the products thereof or in the depression of the farm price of the commodity, and shall thereafter be increased in accordance with the provisions of paragraph (1) of this subsection but subject to the provisions of subdivision (B) of this paragraph (6).

(B) If the average farm price of any commodity, the rate of tax on the processing of which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or is established pursuant to this paragraph (6), during any period of twelve successive months ending after July 1, 1935, consisting of the first ten months of any marketing year and the last two months of the preceding marketing year—

(*i*) is equal to, or exceeds by 10 per centum or less, the fair exchange value thereof, or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 20 per centum of the fair exchange value thereof.

(*ii*) exceeds by more than 10 per centum, but not more than 20 per centum, the fair exchange value thereof, the rate of such tax shall subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 15 per centum of the fair exchange value thereof.

(*iii*) exceeds by more than 20 per centum the fair exchange value thereof, the rate of such

tax shall (subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 10 per centum of the fair exchange value thereof.

(C) Any rate of tax which has been adjusted pursuant to this paragraph (6) shall remain at such adjusted rate unless further adjusted or terminated pursuant to this paragraph (6), until December 31, 1937, or until July 31, 1936, in the case of rice.

(D) In accordance with the formulae, standards, and requirements prescribed in this title, any rate of tax prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6) shall be increased.

(E) Any tax, the rate of which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6), shall terminate pursuant to proclamation as provided in section 9 (a) of this title or pursuant to section 13 of this title. Any such tax with respect to any basic commodity which terminates pursuant to proclamation as provided in section 9 (a) of this title shall again become effective at the rate prescribed in paragraph (2), (3), (4) or (5) of this subsection, subject however, to the provisions of subdivisions (A) and (B) of this paragraph (6), from the beginning of the marketing year for such commodity next following the date of a new proclamation by the Secretary as provided in section 9 (a) of this title, if such marketing year begins prior to December 31, 1937, or prior to July 31, 1936, in the case of rice, and shall remain at such rate until altered or terminated pursuant to the provisions of section 9 or terminated pursuant to section 13 of this title. * * *

(G) If the applicability to any person or circumstances of any tax, the rate of which is fixed in pursuance of this paragraph (6), is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be levied, assessed, collected, and paid (in lieu of all rates of tax fixed in pursuance of this paragraph (6) with respect to all tax liabilities incurred under this title on or after the effective date of each of the rates of tax fixed in pursuance of this paragraph (6)), rates of tax fixed under paragraph (2), (3), (4) or (5), and such rates shall be in effect (unless the particular tax is terminated pursuant to proclamation, as provided in section 9 (a) or pursuant to section (13) until altered by Act of Congress; except that, for any period prior to the effective date of such holding of invalidity, the amount of tax which represents the difference between the tax at the rate fixed in pursuance of this paragraph (6) and the tax at the rate fixed under paragraphs (2), (3), (4) and (5) shall not be levied, assessed, collected, or paid.

RICE—SPECIAL RULE

(7) In the case of rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to a processor, except that, where the producer processes his own rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to the place of processing. * * *

(*c*) For the purposes of part 2 of this title, the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period

specified in section 2; and, in the case of all commodities where the base period is the pre-war period, August 1909 to July 1914, will also reflect interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during said base period; and the current average farm price and the fair exchange value shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture. The rate of tax upon the processing of any commodity, in effect on the date on which this amendment is adopted, shall not be affected by the adoption of this amendment and shall not be required to be adjusted or altered, unless the Secretary of Agriculture finds that it is necessary to adjust or alter any such rate pursuant to section 9 (a) of this title.

(*d*) As used in part 2 of this title— * * *

(7) In the case of rice—

(A) The term "rough rice" means rice in that condition which is usual and customary when delivered by the producer to a processor.

(B) The term "processing" means the cleaning, shelling, milling (including custom milling for toll as well as commercial milling), grinding, rolling, or other processing (except grinding or cracking by or for the producer thereof for feed for his own livestock, cleaning by or directly for a producer for seed purposes, and drying) of rough rice; and in the case of rough rice with respect to which a tax-payment warrant has been previously issued or applied for by application then pending, the term "processing" means any one of the above mentioned processings or any preparation or handling in connection with the sale or other disposition thereof.

(C) The term "co-operating producer" means

any person (including any share-tenant or share-cropper) whom the Secretary of Agriculture finds to be willing to participate in the 1935 production-adjustment program for rice.

(D) The term "processor," as used in subsection (b-1) of section 15 of this title, means any person (including a co-operative association of producers) engaged in the processing of rice on a commercial basis (including custom milling for toll as well as commercial milling).

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Supreme Court of the United States

OCTOBER TERM, 1935

No. 578

A. B. DORE
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND SUPPORTING BRIEF THEREON.

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Houston, Texas.

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No._____

IN THE

Supreme Court of the United States

A. B. DORE,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

PETITION OF A. B. DORE FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

MAY IT PLEASE THE COURT:

The petitioner, A. B. Dore, respectfully prays for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, to hear this cause prior to its decision by the Circuit Court of Appeals and to review the decision of the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, entered in this cause on October 28, 1935, and further to review the decision of the Circuit Court of Appeals in denying

the application of petitioner for a preliminary injunction pending the appeal of said cause in said Circuit Court of Appeals. Petitioner respectfully shows this Honorable Court:

1.

Questions Presented.

(*a*) Is the so-called Agricultural Adjustment Act, as amended on August 24, 1935, constitutional?

(*b*) Does Section 21(d) of said Act deprive petitioner of an adequate remedy at law?

(*c*) Does Article 3224 R. S. or Section 21(a) of said Act forbid the granting of an injunction when petitioner has no adequate remedy at law?

(*d*) If Section 21(a) of said Act forbids an injunction in a case where petitioner has no adequate remedy at law, is said Section 21(a) constitutional?

(*e*) If Congress may constitutionally deprive the Courts of jurisdiction to enjoin the collection of illegal taxes and at the same time deprive the taxpayer of any legal remedy to recover such illegal taxes, may the summary proceedings provided in Sections 115 to 131, Title 26, U. S. C., as amended, be constitutionally employed for the collection of such illegal taxes?

2.

Summary Statement of the Matter Involved.

Petitioner owns and operates a rice mill at Crowley, Louisiana. Under the Act of the 73rd

Congress, P. L. No. 10, approved on May 12, 1933, as amended, known as the Agricultural Adjustment Act, there is imposed a processing tax of 1c per pound upon the first processing or milling of rough rice. The amount of tax shown to be due by petitioner in its return filed for the month of September, 1935, was $18,546.65. This tax was due and payable to respondent on October 30, 1935. October 28, 1935, petitioner filed its bill in the District Court to restrain the collection of this tax and any tax which might become due in subsequent months on the ground that said tax was unconstitutional, that petitioner was without adequate remedy at law, and that without such injunction it would be irreparably damaged. (R. 2.) Respondent filed a motion to dismiss on the ground that the Court had been deprived of jurisdiction by Art. 3224, U. S. R. S., and Section 21(a) of the Agricultural Adjustment Act. (R. 54.) Seven similar suits were consolidated with this by Court order (R. 58) and the Court heard at the same time petitioner's motion for a preliminary injunction and respondent's motion to dismiss for want of jurisdiction. At the hearing petitioner introduced two affidavits in support of its allegation that, due to the peculiar nature of the rice business, it was impossible to accurately determine the profit or loss resulting from the processing and sale of any given lot of rice. (R. 60, 65.) The affidavits further showed that it is impossible to prove what part, if any, of the processing tax is passed forward to the consumer or back to the producer or what part is borne by the miller. Respondent intro-

duced the joint affidavit of three deputy Internal Revenue Collectors which affidavit was inconsistent with the affidavits of petitioner in only one respect. (R. 75.) At the conclusion of the hearing the Court denied petitioner's motion for a preliminary injunction and granted respondent's motion to dismiss upon the ground that the Court was deprived of jurisdiction by Article 3224, U. S. R. S., and Section 21(a) of said Act. (R. 79.) Said Article 3224* and Section 21(a)* forbid the granting of an injunction to restrain the collection of any tax, and of the processing tax here involved, respectively. Under Section 21(d)* of said Agricultural Adjustment Act it is provided that no tax collected under the Act may be recovered except upon proof satisfactory to the Commissioner of Internal Revenue that the payer of the tax had not, directly or indirectly, included such amount in the price of the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee of the commodity, and that the price paid by the taxpayer for the unprocessed commodity was not reduced by any part of such amount. The bill below, and supporting affidavits, show the manner in which rough rice is milled and the manner in which it is sold, and that from any given lot of rough rice many different grades and qualities of clean rice are produced. The usual and customary method of selling rice is to sell it on samples made up of mixtures of different lots of clean rice which in turn are derived from differ-

*Set out in Appendix to Brief.

ent lots of rough rice purchased from different parties, and when an order for clean rice is received, based on any particular sample, the miller fills the order of clean rice from a mixture from various lots of clean rice. Many sales are made during a given season made up of various mixtures of clean rice, and there is practically an unlimited combination of lots of clean rice that go into the various sales. There is no way of accurately allocating to the various lots of rice going into any given mix any definite part of the price received for the entire mix. (R. 16-21.) Petitioner's sworn bill and affidavits showed that for these reasons it is impossible for petitioner or any other rice miller to make the proof required for recovery of the tax paid, if the law be held unconstitutional, even if it were otherwise possible to make such proof. Petitioner's sworn bill alleged that unless the injunction prayed for was granted: (1) It would be without adequate remedy at law to recover the taxes paid in the event they be held unconstitutional; (2) if any legal remedy existed, it would entail a multiplicity of suits; (3) it would become subject to heavy civil and criminal penalties and (4) it would suffer great and irreparable damages for specific reasons set out. (R. 15, 16, 23.) Respondent filed no answer denying any of these allegations. Petitioner alleged below that the said Section 21(d) did not apply to its suit because petitioner had no adequate remedy at law. It alleged further that, if said section be interpreted as prohibiting the injunction prayed for, the said

section, together with the other provisions of the Act, violated the Fifth Amendment to the Constitution in that said unconstitutional taxes would be collected from petitioner and petitioner would have no remedy by which it could recover said taxes, if they were unlawful, and thereby petitioner would be deprived of the right to test the constitutionality of the taxes. (R. 23.) Petitioner offered to give such security as the Court might require if the injunction were granted. (R. 24.) There was neither pleading nor proof that the granting of the injunction would in any wise injure respondent if the tax were ultimately held constitutional.

On October 29, 1935, petitioner was allowed an appeal. (R. 81.) On the same day petitioner applied for, and was denied, an injunction pending appeal. (R. 80.) The record was duly filed in the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, on November 4, 1935, being Cause No. 7945 on the docket of that Court. On November 4, 1935, petitioner applied to said Circuit Court of Appeals for an injunction against the respondent pending the hearing of its appeal (R. 87), but the Circuit Court of Appeals on November 5, 1935, denied the application. (R. 98.)

3.

Reasons Relied Upon for the Allowance of the Writ.

This case, with its companion cases, presents an entirely unprecedented situation. It presents questions of gravity and importance. It involves the

constitutionality of an important Federal statute and the rulings of the Court below, insofar as they may be taken to have held the statute constitutional, are probably in conflict with the decisions of this Court in *Loan Association v. Topeka* (1874), 20 Wall. 655; *Child Labor Tax Case* (1922), 259 U. S. 20; *Hill v. Wallace* (1922), 259 U. S. 44; *Hammer v. Dagenhart* (1918), 247 U. S. 251; and *Schechter Poultry Corporation v. United States* (1935), 295 U. S. 495; and contrary to the decision of the United States Circuit Court of Appeals for the Second Circuit in *Butler et al. v. United States* (1935), 78 Fed. (2nd) 1. The District Court and the Circuit Court of Appeals in holding that Congress may constitutionally forbid the granting of an injunction against summary collection of taxes, while at the same time depriving the taxpayer of any adequate remedy at law, presents a constitutional question of great importance never decided by this Court and a question which should be definitely decided. Though this question has never been *directly* decided by this Court, the decisions of the Courts below probably conflict with the decisions of this Honorable Court in *Truax v. Corrigan* (1921), 257 U. S. 312; *Brinkerhoff-Faris Trust & Savings Company v. Hill* (1930), 281 U. S. 673, and inferentially *Graham & Foster v. Goodcell* (1931), 282 U. S. 409, 430, 431; *Michaelson v. United States* (1924), 266 U. S. 42, 64, 65, 66, and *Phillips v. Commissioner* (1931), 283 U. S. 589, 596. This holding was particularly erroneous when the respondent was, at the same time,

authorized to collect the tax by summary proceedings under Sections 115 to 131, Title 26, U. S. C., as amended.

In holding that Article 3224, U. S. R. S., and Section 21(a) of said Act deprive the courts of jurisdiction to grant an injunction under the unusual and extraordinary circumstances of this case, the courts below decided an important question of Federal law in a way probably in conflict with the decisions of this Honorable Court in *Hill v. Wallace* (1922), 259 U. S. 44, and *Miller, Collector, v. Standard Nut Margarine Company* (1932), 284 U. S. 498, and in conflict with the unreported decisions of the Second, Sixth, Eighth, Ninth and Tenth Circuit Courts of Appeals, which granted injunctions pending appeal in cases similar to the present case.

The District Court, in refusing to grant petitioner's motion for a preliminary injunction, and in refusing to grant petitioner's motion for an injunction pending appeal, and the Circuit Court of Appeals in refusing to grant petitioner's motion for an injunction pending appeal, have so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Honorable Court's power of supervision and this action of the courts below is probably in conflict with the decision of this Honorable Court in *Ohio Oil Company v. Conway* (1929), 279 U. S. 813, and is in conflict with the holdings of every other Circuit Court of Appeals which has passed upon this question, to wit, the Circuit Courts of Appeals for the Second, Sixth, Eighth, Ninth and Tenth Circuits.

4.

Reasons Relied Upon for the Allowance of Writ Before Action on the Merits by the Circuit Court of Appeals.

This case, with its companion cases, presents a situation unparalleled in American history. Under the provisions of Sections 115 to 131, Title 26, U. S. C., as amended, the respondent is armed with weapons for the immediate forcible collection of the tax from petitioner, and those similarly situated, which they are powerless to resist. The District Court and Circuit Court of Appeals below have, contrary to the decisions of all other Circuit Courts of Appeals passing upon the question, held themselves deprived of any jurisdiction whatsoever to grant petitioner any relief. In the ordinary course of events it will be six or seven months before petitioner's appeal to the Circuit Court of Appeals will be heard on the merits. Meanwhile, through collection of the tax the subject-matter of the appeal may be destroyed, and the case become moot before a hearing may be had in the Circuit Court of Appeals. In addition, the order of the court below, though apparently an interlocutory order, has the effect of finally disposing of the appeal on the merits. The questions involved are of great national importance, and deserve the prompt consideration of this Honorable Court. This petition raises important questions of constitutional law not raised by any other petition now before this Court, and particularly it raises the question whether the provisions of Sections 115 to 131, Title 26, U. S. C., as

amended, are constitutional, if it be held that Congress may constitutionally deprive a taxpayer of all adequate remedy at law to recover taxes illegally collected while at the same time forbidding the granting of an injunction to restrain their collection. Hundreds of similar suits throughout the country involve this question, as well as the others herein raised, and the situation thus presented is so unusual and unprecedented as to justify this Honorable Court in requiring the record below to be certified to it forthwith for decision.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari may issue out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Fifth Circuit commanding said court to certify and send to this Court, on a day certain, to be therein designated, a full and complete Transcript of the Record and all of the proceedings in the Circuit Court of Appeals in said cause entitled A. B. Dore, Appellant, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Appellee, No. 7945 on its docket, to the end that said cause may be reviewed and determined by this Court as provided by Section 240 of the Judicial Code, as amended, and that your petitioner may have such other and further relief or remedy in the premises as this Court may deem appropriate and in conformity with said provisions of the Judicial Code, and that said judgment of the

District Court be reversed by this Honorable Court and such relief granted as is appropriate to the cause..

A. B. DORE,

By HOMER L. BRUCE,

JOHN P. BULLINGTON,
Attorneys for Petitioner.

Of Counsel,
BAKER, BOTTS, ANDREWS & WHARTON,
Houston, Texas.

No.....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

A. B. DORE,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

The Opinions of the Courts Below.

The District Court wrote no opinion and the Circuit Court of Appeals has not yet rendered any decision on the merits of the appeal. The *per curiam* opinion of the Court denying the injunction pending appeal is found on page 98 of the record.

II.

Jurisdiction.

(1) Jurisdiction of this cause is conferred upon this Honorable Court by *Judicial Code, Section* 240, *as amended; United States Code, Title* 28, *Section* 347.

(2) The date of the judgment of the Trial Court to be reviewed is October 28, 1935 (R. 79), the date of the order of the Circuit Court of Appeals denying the injunction pending appeal sought to be reviewed is November 5, 1935. (R. 98.)

(3) The power of this Honorable Court to review the case prior to a disposition of it by the Circuit Court of Appeals and to review the action of the Circuit Court of Appeals in refusing to grant an interlocutory order to preserve the *status quo* is sustained by the following, among other, cases:

The Three Friends (1897), 166 U. S. 1, 49.
Denver v. New York Trust Company (1913), 229 U. S. 123, 133.
Harriman v. Northern Securities Company (1905), 197 U. S. 244, 286.
American Construction Company v. Jacksonville Railway (1893), 148 U. S. 372, 384.
Forsyth v. Hammon (1897), 166 U. S. 506, 513.
In re Chetwood (1897), 165 U. S. 443, 462.
McClellan v. Carland (1910), 217 U. S. 268, 277.
Hanover Star Milling Company v. Metcalf (1916), 240 U. S. 403, 408.
Gay v. Ruff (1934), 292 U. S. 25, 30.

III.

Statement of the Case.

A full statement of the case has been given under heading 2 in the petition and in the interest of brevity the statement is not repeated at this point.

IV.

Specification of Errors.

(1) The District Court erred in holding that it was without jurisdiction to hear petitioner's cause because of the provisions of R. S. Sec. 3224, and Sec. 21(a) of the Agricultural Adjustment Act, as amended.

(2) The District Court erred in refusing to grant petitioner a preliminary injunction pending a hearing on the merits.

(3) The District Court and Circuit Court of Appeals erred in holding that said Sec. 21(a) did not deprive petitioner of its property without due process of law contrary to the Fifth Amendment to the Constitution of the United States, in view of the allegations in the bill, admitted by the motion to dismiss, that petitioner was without remedy at law to recover the taxes paid if they were held to be illegal.

(4) The District Court and the Circuit Court of Appeals erred in holding that if said Sec. 21(a) forbade the granting of an injunction restraining the collection of the tax, and if petitioner had no remedy at law to recover the same, if it be held they were illegally collected, respondent could neverthe-

less employ the summary proceedings for immediate collection of the tax provided in Sections 115 to 131, Title 26, U. S. C., as amended, without depriving petitioner of its property without due process of law contrary to the Fifth Amendment to the Constitution of the United States.

(5) The District Court and the Circuit Court erred in holding that either or both R. S. §3224, and Sec. 21(a) of said Act prevented the granting of an injunction under the special and extraordinary circumstances presented by this case.

(6) The Circuit Court of Appeals erred in holding that petitioner had "a remedy at law to recover back any taxes illegally exacted."

(7) The Circuit Court of Appeals erred in refusing to grant petitioner an injunction to preserve the *status quo* pending its appeal from the order dismissing the bill.

(8) The Circuit Court of Appeals erred in refusing to grant petitioner an injunction pending the appeal for the purpose of preserving the appellate jurisdiction of that Court.

(9) The Circuit Court of Appeals erred in holding either or both R. S. §3224, and Sec. 21(a) of said Act "deprived the Court of jurisdiction to grant injunctive relief."

(10) The District Court and Circuit Court of Appeals erred in not holding the Agricultural Adjustment Act, as amended, to be violative of Art. 1, Sec. 1, Amendments Five and Ten of the Constitution of the United States.

Petitioner expects to rely on all of the foregoing specifications of error.

V.

ARGUMENT

Summary of the Argument.

Point A

Neither R. S. §3224, nor Sec. 21(a) of the Agricultural Adjustment Act, properly interpreted, bars injunctive relief in this case.

Point B

Sec. 21(d) of the Agricultural Adjustment Act deprives petitioner of any adequate remedy at law.

Point C

If R. S. §3224, and Sec. 21(a) of the Agricultural Adjustment Act forbid the granting of an injunction in this case, then they are unconstitutional.

Point D

The summary proceedings provided in Sections 115 to 131, Title 26, U. S. C., as amended, are unconstitutional when applied to a taxpayer who has been deprived of both legal and equitable remedies to test the constitutionality of the tax thus sought to be collected.

Point E

The Agricultural Adjustment Act, as amended, is unconstitutional.

Point F

This is a case where certiorari should be granted prior to the final decree by the Circuit Court of Appeals.

Point A

Inapplicability of R. S. §3224 and Section 21(a) of the Agricultural Adjustment Act.

In wording and in effect R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act, as amended, are for all practical purposes identical. For the convenience of the Court the two acts are here set out side by side:

R. S. §3224.	A. A. A. Sec. 21(a).
No suit	No suit, action or proceeding (including probate, administration, receivership, and bankruptcy proceedings)
shall be maintained in any court	shall be brought or maintained in any court
for the purpose of restraining the assessment or collection of any tax.	if such suit, action or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or

> collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment * * *.

This Court has consistently held that despite the apparently unconditional terms of R. S. §3224, injunctions against the collection of a tax may issue in proper cases. The latest expression of the Court on the point is found in *Miller v. Standard Nut Margarine Company* (1932), 284 U. S. 498, 509, where the Court said:

> "The section does not refer specifically to the rule applicable to cases involving exceptional circumstances. The general words employed are not sufficient, and it would require specific language undoubtedly disclosing that purpose, to warrant the inference that Congress intended to abrogate that salutary and well established rule. * * * It has never held the rule to be absolute, but has repeatedly indicated that extraordinary and exceptional circumstances render its provisions inapplicable. * * *
>
> " * * * It requires no elaboration of the facts found to show that the enforcement of the Act against respondent would be arbitrary and oppressive, would destroy its business, ruin it financially and inflict loss for which it would have no remedy at law. It is clear that, by reason of the special and extraordinary facts and circumstances, Sec. 3224 does not apply."

See also Hill v. Wallace (1922), 259 U. S. 44, 62; Dodge v. Osborn, (1916), 240 U. S. 118, 121.

Section 21(a) was included in the amendment to the Act of August 24, 1935, after numerous suits to restrain the collection of the tax had been filed throughout the country in which the contention was made that the supposed tax was in fact no tax at all but a penalty. *e.g., Penn v. Glenn,* 10 Fed. Supp. 483, 484 (April 13, 1935); F. G. Vogt & Sons, Inc. v. Rothensies, 11 Fed. Supp. 225, 230 (July 17, 1935); Armour & Company v. Harrison (not yet reported, District Court, Northern District of Illinois), in which the Court said in connection with R. S. §3224:

> "Merely to call this exaction a tax does not make it a tax. It is not levied for governmental purposes; therefore, it is not a tax. Therefore, the statute has no application to it."

The obvious purpose of Congress in including this section in the amendment was to make certain its intention that the principle of R. S. §3224 should apply to suits brought to restrain collection of these particular taxes. Having expressed its intention in words practically identical with those used in R. S. §3224, the amendment must be interpreted in the light of the well settled rule that, when a statute is reenacted in the same words as a previous statute which has received a judicial interpretation, the re-enacted statute includes the previous judicial interpretation. Louisville Cement Co. v. Interstate Commerce Commission (1918), 246 U. S. 638, 644.

Further it must be interpreted in the light of the

rule that a statute, susceptible of two constructions, should be construed in such a way as not to raise doubts as to its constitutionality. *Panama R. R. Co. v. Johnson* (1924), 264 U. S. 375; *Michaelson v. United States* (1924), 266 U. S. 42. As will be pointed out hereafter, to interpret this statute in the manner in which it has been interpreted below would raise grave doubts as to its constitutionality.

Interpreting these statutes as not forbidding injunctive relief in *all* cases we may pass to a discussion of whether extraordinary and exceptional circumstances exist in this case such as would render them inapplicable.

Point B

Section 21(d) of the Agricutural Adjustment Act Deprives Petitioner of Its Remedy at Law.

Section 21(d)* forbids the return of any taxes illegally collected under the Act unless the taxpayer proves, to the satisfaction of the Commissioner, that neither the taxpayer nor any person directly or indirectly under his control has, directly or indirectly, included the amount of the tax or any part thereof in the price of the commodity with respect to which it was imposed, or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner or included any part of such amount in the charge or fee

*Printed in the appendix.

for processing, and that the price paid by the taxpayer for the commodity was not reduced by any part of the tax paid. This, obviously, was an attempt to enact into law the economic theory that the burden of any tax imposed upon a manufacturer or processor is ultimately passed on to others. In speaking of a sales tax, Mr. Justice Stone and Mr. Justice Brandeis, dissenting in *Indian Motorcycle Company v. U. S.* (1931), 283 U. S. 570, 581, said:

> "In the Panhandle Oil Case, it was held that this shifting of the burden of a State tax from the seller to the buyer was sufficient to render the tax invalid where the buyer was an agency of the United States, and it was assumed that the burden of the sales tax involved was so inevitably passed on to the buyer as to require this result. With this assumption economists would not, I believe, generally agree. Many hold that whether the burden of any tax paid by the seller is actually passed on to the buyer depends upon considerations so various and complex as to preclude the assumption *a priori* that any particular tax at any particular time is passed on. In some conditions of the market, the burden remains with the seller, or even may be shifted back from the seller to the producer by the reduction of the producer's price, rather than forward to the consumer by an increase of the seller's price."

Likewise Mr. Justice Holmes speaking for the full Court in *Lash's Products Company v. U. S.* (1929), 278 U. S. 175, 176, said:

> "The phrase 'passed the tax on' is inaccurate, as obviously the tax is laid and remains on the

> manufacturer and on him alone. Heckman & Co. v. I. S. Dawes & Son Co., 12 F. (2d) 154. The purchaser does not pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all."

A sales tax is of course easily identifiable, or capable of identification, because levied on the sale of a given identifiable object and based upon the price at which the object is sold. If the question of whether such a tax has been "passed on" is so debatable, how much more so must be the case of a tax, such as a processing tax, which is carried as a part of the processor's expenses of operation? Even more complicated is the situation when, as here, the price paid to the producer and by the consumer fluctuates from day to day on competitive markets influenced by complex and manifold economic factors. However, whatever the merits of the theory *qua* theory, there can be no question that in order to make *factual proof* as to whether a processing tax has been "passed on" it must be shown that the price to the vendee has been increased *because* of the tax, or that the price paid to the producer has been reduced *because* of the tax. When a commodity, such as rice, is bought and sold on competitive markets such proof can be made only by proving what the market *would have been* had there been no tax. This Court held in *International Harvester Company v. Kentucky* (1914), 234 U. S. 216, 223, that the determination of what the market price of a given article would have been under different cir-

cumstances "is a problem that no human ingenuity could solve," and that:

> "The reason is not the general uncertainties of a jury trial but that the elements necessary to determine the imaginary ideal are uncertain both in nature and degree of effect to the acutest commercial mind. The very community, the intensity of whose wish relatively to its other competing desires determines the price that it would give, has to be supposed differently organized and subject to other influences than those under which it acts. * * *
>
> " * * * To compel them to guess on peril of indictment what the community would have given for them if the continually changing conditions were other than they are, to an uncertain extent; to divine prophetically what the reaction of only partially determinate facts would be upon the imaginations and desires of purchasers, is to exact gifts that mankind does not possess."

The situation involved in this case is many times more complex than that in the case just referred to. The manner in which the rice milling business is conducted is too complicated to set out in the confines of this brief but is fully set out in the petition and affidavits in support thereof. (R. 16-21, 60-75.) Because of the manner in which the rice milling business is, and must be, conducted it is impossible for a miller to tell accurately whether he has made a profit or loss with respect to the purchase, milling, and sale of a given lot of rough rice. (R. 62.) He can make a book figure with regard to any such lot

of rice by the use of averages, estimates, and arbitraries but that is all. He can only tell, at the end of the season, whether he has made a gain or loss on the season's operations. (R. 62.) The processing tax is levied upon each lot of rice based upon its weight at the time it reaches the mill and in order to recover the tax paid on such rice, under the provisions of Sec. 21(d), the miller must prove that he did not "pass on" the tax with respect to that particular lot of rice. Since he cannot even determine whether he made a profit or a loss on the particular transaction, it is manifestly impossible for him to know, much less prove, whether he has passed the tax on. However, even if he were able to prove exactly the amount of profit he made on each transaction, he would still have proved nothing but that. For all that he, or anyone else, could know he might have been able to sell the particular lot of rice for exactly the same price even if there had been no tax and he might have been able to purchase it for exactly the same price had there been no tax. On the face of it such matters are incapable of proof or even a sound guess. The miller cannot control the market on which he buys nor that on which he sells but he is compelled to buy and sell on those markets if he is to stay in the rice milling business. This lack of control of the markets by the miller is illustrated by the fact that the present cost of rough rice, plus operatings costs, including tax, is more than the miller can reasonably expect to get out of the products processed from it on the present market

for clean rice and rice products. (R. 62.) Manifestly under such circumstances no one can know, much less prove, whether the ultimate burden of the tax has fallen on the producer, the miller, or the purchaser. An analogous situation arises where a trademark has been infringed and the question arises as to how much of the sales price received by the infringer is attributable to the use of the trademark and how much to the intrinsic value of the object sold. In *Hamilton Shoe Company v. Wolf Bros.* (1916), 240 U. S. 251, 260, this Court held that in such a case it would, in the very nature of things, be impossible to ascertain to what extent the infringer could have effected sales and at what prices except for the use of the trademark. The same principle is applicable here—it is inherently impossible, in the circumstances of this case, for petitioner, or any other rice miller, to ascertain or prove to what extent he could have "effected sales and at what prices" except for the existence of the processing tax.

More than a thousand suits to enjoin the collection of these taxes have been filed throughout the United States. Insofar as petitioner knows the government has never yet been able to suggest *how* the proof required by the statute can be made. The government has satisfied itself with the simple assertion that proof *can* be made and with citing the opinion of this Court in *United States v. Jefferson Electric Manufacturing Company* (1934), 291 U. S. 386, 402, where the Court said:

"If the taxpayer has borne the burden of the tax, he can readily show it." * * *

The tax involved in that case was a tax upon the *sale* of a definite determinable object and amounted to 5% of the price for which the object was sold. The tax was not upon the manufacture, or the manufacture *and* sale. *Indian Motor Cycle Company v. United States* (1931), 283 U. S. 570, 574. In determining whether the payer of the tax collected it from the vendee or paid it himself there were no such complications as here exist. Indeed it was not suggested by anyone that the required proof could not be made; only that the taxpayer should not have to make it because the tax involved in the suit had been paid prior to the passage of the Act and at a time when it would not have been necessary for the payer to make such proof to procure refund. (P. 401.) The present case came before the Circuit Court of Appeals on a *final judgment dismissing the bill* on motion of the respondent which admitted the allegation that the proof required by the Act was impossible of being made. Nevertheless, and in the face of this, the Circuit Court of Appeals held that petitioner had "a" remedy at law (nothing being said as to the *adequacy* of it). Petitioner asserts that on the face of the Act, considering the *kind* of tax involved, an impossible burden of proof is placed upon petitioner. Petitioner further asserts that even if this were not true the Courts below should have enjoined the collection of the tax until such time as the courts could make a finding upon the

fact question of whether, under the peculiar conditions of the rice milling industry, the proof could be made. Respondent has not denied the allegations of petitioner's bill in this respect and under the circumstances the Court should not have dismissed the bill but was under the plain duty of preserving the *status quo* until such time as the facts upon which petitioner's constitutional rights depended could be fully determined. *cf Ohio Oil Company v. Conway* (1929), 279 U. S. 813.

Besides the lack of any adequate remedy at law this case presents several other grounds for equitable relief which have been held sufficient by this Court for the enjoining of the collection of a tax:

1. Multiplicity of suits (R. 23). *Wilson v. Illinois Southern Railroad* (1924), 263 U. S. 574; *Raymond v. Chicago Union Traction Company* (1907), 207 U. S. 20.

2. Congress has made no appropriation to repay any of these taxes if illegally collected, even if an adequate remedy at law were available, and in view of the tremendous amount involved it is improbable that any such appropriation will be made. (R. 24.) *Stewart Dry Goods Company v. Lewis* (1932), 287 U. S. 9.

3. The statute purporting to give the legal remedy has never been interpreted by the Courts and for this reason, if no other, petitioner's remedy at law cannot be said to be adequate. *Atlantic Coast Line v. Daughton* (1923), 262 U. S. 413. *cf Union Pacific Railroad v. Weld County* (1917), 247 U. S. 282.

4. The existence of the heavy civil and criminal penalties provided by Section 19(b) of the

Act*. (R. 15.) *Ex Parte Young* (1908), 209 U. S. 123, 146; *Wallace v. Hines* (1920), 253 U. S. 66.

Point C

Unconstitutionality of R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act Under the Circumstances of This Case.

The argument is made that the District Courts and Circuit Courts of Appeals, not being constitutional courts, may be completely abolished by Congress and therefore Congress may place any desired restriction on their jurisdiction. The answer to this is that Congress has not abolished the District Courts nor the Circuit Courts of Appeals and not having abolished them the Congress may not constitutionally deprive one class of citizens of the right to equitable relief therein while at the same time and under similar circumstances other taxpayers are permitted to obtain such relief. Persons other than those subject to the processing tax from whom illegal taxes are sought to be collected may enjoin their collection under special and extraordinary circumstances. *Hill v. Wallace, supra; Miller v. Standard Nut Margarine Company, supra.* The right to protect one's property by invoking the aid of courts is as much a property right as the property itself, and to deny one class of citizens this right while granting it to others under similar circumstances

*The applicable penalty provisions are copied in Appendix C hereto.

is to deprive the class so denied of its property without due process of law. In *Truax v. Corrigan* (1921), 257 U. S. 312, which involved an Arizona statute which forbade the issuance of injunctions to protect property rights in cases of labor disputes the contention was made in support of the validity of the statute that the State could have completely abolished the lower courts and therefore the State could put such limitations as it desired upon their jurisdiction. This court nevertheless held the statute violative of the Fourteenth Amendment. Since the validity of exertions by the Federal Government of any of its delegated powers under the Fifth Amendment are to be measured by the same standards by which exertions of State power are measured under the Fourteenth Amendment, *Hamilton v. Kentucky Distilleries Co.* (1919), 251 U. S. 146, 156, it would seem clear that R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act are unconstitutional if they be construed as depriving courts of jurisdiction to issue injunctions to protect property rights in tax cases where the taxpayer is without remedy, or at least adequate remedy, at law.

In *Brinkerhoff-Faris Trust & Savings Company v. Hill* (1930), 281 U. S. 673, the Supreme Court of Missouri held that the trial court properly dismissed a bill seeking to enjoin the illegal assessment and collection of taxes on the ground that the taxpayer should first have pursued remedies before the State Board of Equalization. That court had

previously held that the State Board of Equalization was without jurisdiction to hear such complaints. The effect of the second decision was to deprive the petitioner of all right to test the validity of the tax. This court held that this amounted to a deprivation of petitioner's property without due process of law, Mr. Justice Brandeis saying:

> "Whether acting through its judiciary or through its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it."

This language is exactly applicable to the instant case and seems conclusive that if R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act be construed as forbidding injunctive relief in this case they are unconstitutional. See also *Graham & Foster v. Goodcell* (1931), 282 U. S. 409, 430, 431.

However absolute the power of Congress to destroy the jurisdiction of the inferior Federal Courts may seem, it is no more absolute than the apparent power of the State to arbitrarily exclude a foreign corporation from doing business within its borders. Nevertheless, this court has held, *Fidelity & Deposit Company v. Tafoya* (1926), 270 U. S. 426, that this "most absolute seeming" right was qualified and in some circumstances could become wrong, and that despite this apparently unqualified right the State could not impose an unconstitutional condition upon the foreign corporation coming into the

State. The exercise of Congress's right to limit the equity jurisdiction of the lower Federal Courts in the granting of injunctions in tax cases such as the present would be, as in the case just cited, for the purpose of securing a result forbidden by the Fifth Amendment, i. e., the deprivation of petitioner's property without due process of law, and may not stand.

There is still another reason why these statutes, if construed to absolutely and in all cases forbid injunctions, are unconstitutional. The Constitution, Article III, Section 1, vests the judicial power of the United States in one Supreme Court and such inferior courts as the Congress may from time to time ordain and establish. By Section 2 of Article III this judicial power extends to all cases in law and *equity* arising under the Constitution and laws of of the United States. Congress having established the District Courts and the Circuit Courts of Appeals, they, by virtue of the Constitution, at once become vested with judicial power in all cases arising under the Constitution and laws of the United States. These inferior courts derive their *judicial power* from the Constitution and not from any act of Congress. Congress may well have the power to regulate the procedure in these courts and to define their jurisdiction but Congress may not, it is submitted, deprive the courts of their *inherent judicial powers* which naturally follow from the Constitutional grant of those powers. This was expressly held in *Michaelson v. United States*

(1924), 266 U. S. 42, 64, 65, 66, where the court said:

> *"If the statute now under review encroaches upon the equity jurisdiction intended by the Constitution, a grave constitutional question in respect of its validity would be presented;* and it, therefore, becomes our duty, as this Court has frequently said, to construe it 'if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score.' Panama R. R. Co. v. Johnson, 264 U. S. 375.
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> * * *
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> "But it is contended that the statute materially interferes with the inherent power of the courts and is therefore invalid. That the power to punish for contempts is inherent in all courts, has been many times decided and may be regarded as settled law. It is essential to the administration of justice. *The courts of the United States, when called into existence and vested with jurisdiction over any subject, at once become possessed of the power.* So far as the inferior Federal Courts are concerned, however, it is not beyond the authority of Congress (*Ex parte* Robinson, 19 Wall. 505, 510-511; Bessette v. W. B. Conkey Co., 194 U. S. 324, 326); *but the attributes which inhere in that power and are inseparable from it can neither be abrogated nor rendered practically inoperative.* That it may be regulated within limits not precisely defined may not be doubted. The statute now under review is of the latter character."

The power of courts of equity to issue injunctions to protect property rights, which could not otherwise be protected, is quite as inherent as the power

to punish for contempt. Conceding the authority of Congress to regulate or limit the use of the power, to an undefined extent, the case here presents no such situation, for to interpret the acts as depriving the courts of the power to issue injunctions in *every case* involving the collection of the tax, would be to completely destroy one of the inherent powers of the court which it possesses by virtue of Section 2 of Article III of the Constitution. For these reasons petitioner submits that R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act, so construed, are unconstitutional.

Point D

Unconstitutionality of Summary Proceedings for Collection of the Tax.

Under Sections 115 to 131, Title 26, U. S. C., as amended,* which are incorporated into the present Act, the Commissioner is authorized to collect the taxes, upon non-payment, by the fixing of liens on all of petitioner's property or by the levying of distraints against petitioner's property, including bank accounts, etc. The procedure is summary and under the distraint proceedings it would be entirely possible for the Commissioner to collect the full tax alleged to be owed by petitioner before petitioner could even know any proceedings had been started to collect the tax. All that would be necessary would be for the Commissioner or a deputy to walk

*Printed in Appendix B.

to petitioner's bank with the proper papers and distrain petitioner's money there deposited. The constitutionality of this summary procedure was upheld in *Phillips v. Commissioner* (1931), 283 U. S. 589, 596, upon the express ground that under existing statutes the taxpayer was given ample opportunity to ultimately test the liability for the tax in a court of law, the court saying:

> "Where only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, *if the opportunity given for the ultimate judicial determination of the liability is adequate.* Springer v. United States, 102 U. S. 586, 593; Scottish Union & National Ins. Co. v. Bowland, 196 U. S. 611, 631."

Under the facts of this case plaintiff is deprived of all legal remedy to recover the tax collected, if it be held illegal, because of the impossible burden of proof petitioner would have to meet in such a suit and, if R. S. §3224 and Sec. 21(a) be so construed, petitioner is deprived of the right to test the validity of the tax by a suit for an injunction. To permit the government to summarily seize petitioner's property under these circumstances would be to deprive petitioner of his property without due process of law and to argue this further would be to argue the obvious. See, in addition to the case cited, *Lipke v. Lederer* (1922), 259 U. S. 557, 562; *Carpenter v. Shaw* (1930), 280 U. S. 363, 369; *Ward v. Love County* (1920), 253 U. S. 17.

Point E

The Agricultural Adjustment Act, as Amended, Is Unconstitutional.

Petitioner asserts that the Agricultural Adjustment Act, as amended, is unconstitutional for the following reasons:

1. The Act, though in form a revenue measure, is in fact an attempt to regulate the price at which petitioner buys and sells rice in intrastate commerce.

2. The Act is an attempt to control the production of agricultural commodities within the several States.

3. The taxes are not levied for the general welfare or for a public purpose.

4. The Act, as amended, contains an unconstitutional delegation of legislative power to the Secretary of Agriculture.

Section 2(1) of the Act declares the policy of the Act to be "to establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. * * *" The rice miller is still compelled to pay the market price for all rice bought from farmers, and in addition thereto he is compelled to pay $1.62 per barrel

on the rice so purchased, which $1.62 in turn is given to the farmer under the guise of benefit payments. The object is to raise the price to the farmer and that object is obtained in part, at least, by compelling petitioner to pay at least $1.62 per barrel more for his rice than he would otherwise have to pay. Since the purchase is wholly within intrastate commerce, it is unquestionably beyond the power of the Federal Government to control. *Hill v. Wallace* (1922), 259 U. S. 44; *Schechter Poultry Corporation v. United States* (1935), 295 U. S. 495; *Butler v. United States of America* (C. C. A., First, 1935), 78 Fed. (2nd) 1. Congress being without power by direct regulation to fix or control these prices, it cannot achieve the same result by casting a law having that purpose into the form of a revenue measure. *Child Labor Tax Case* (1922), 259 U. S. 20; *Hill v. Wallace, supra; Hammer v. Dagenhart* (1918), 247 U. S. 251.

Secondly, the Act attempts to control and reduce the production of agricultural commodities by farmers within the several States. In Section 8(1) the Secretary of Agriculture is authorized

> "to provide for reduction in the acreage or reduction in the production for market, or both, of any basic agricultural commodity, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith or upon that part of the production of any basic agricultural commodity required for domestic consumption, such amounts as the Secretary deems fair and reasonable." * * *

Of all industries, agriculture is the most essentially intrastate, and this has long been recognized by this Court. *Kidd v. Pearson* (1888), 128 U. S. 1, 21; *Heisler v. Thomas Colliery Company* (1922), 260 U. S. 245, 259; *Industrial Association v. United States* (1925), 268 U. S. 64, 82. Since the Act has for its purpose the regulation of this purely intrastate matter, *Schecter Poultry Corporation v. U. S., supra; Hill v. Wallace, supra,* the tax levied to effectuate this purpose must fall. *Child Labor Tax Case, supra; Railroad Retirement Board v. Alton Railroad Company* (1935), 295 U. S. 330; *Gibbons v. Ogden* (1824), 9 Wheat. 1, 199.

The fact that the arrangements between the Secretary of Agriculture and the individual farmers by which the latter reduce their acreage and the former makes benefit payments to them therefor out of the taxes collected from processors does not make the Act in purpose and effect any the less a regulation of agriculture within the State. *cf. Schecter Poultry Corporation v. U. S., supra,* p. 529. The arrangements are made by virtue of, and under authority of, the law, and it is idle to say that the act of the farmer in reducing his acreage pursuant to the contract with the Secretary of Agriculture is voluntary when the farmer knows that if he does not execute such agreement he is subjected to the penalty of having to sell his commodity at the same price at which other farmers sell it minus the substantial amount received by the other farmers by way of benefit payments. (R. 41.) Further-

more, without the tax provisions in the Act (which are certainly not voluntary) the enormous benefit funds with which to coerce the farmers into making the "voluntary" agreements would not be available and the result sought to be achieved by Congress, to wit, the regulation of agriculture within the several States, could not be accomplished.

Third, it seems plain that these taxes are not levied for the general welfare or a public purpose, as required by Article I, Section 8, Clause 1, of the Constitution. It is plain from the face of the Act that it is an attempt to redistribute purchasing power and the taxes provided by the Act are to be used solely for that purpose. Under Section 12(b) of the Act it is provided that "* * * for the purpose of effectuating the declared policy of this title, a sum equal to the proceeds derived from *all taxes* imposed under this title is hereby appropriated to be available to the Secretary of Agriculture * * *." That a tax cannot be levied on A for the purpose of paying a bounty to B was long ago held by this court in *Loan Association v. Topeka* (1874), 87 Wall. 655, 663, where Mr. Justice Miller said:

> "The power to tax is, therefore, the strongest, the most pervading of all the powers of the government, reaching directly or indirectly to all classes of the people. It was said by Chief Justice Marshall, in the case of McCullough v. The State of Maryland, that the power to tax is the power to destroy. A striking instance of the truth of the proposition is seen in the fact that the existing tax of ten per cent imposed by the United States on the circula-

> tion of all other banks than the National banks, drove out of existence every State bank of circulation within a year or two after its passage. This power can as readily be employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited wealth and prosperity to the other, if there is no implied limitation of the uses for which the power may be exercised."

It has been urged that the tax is constitutional because a favorable readjustment of the farmers' economic condition will ultimately redound to the general public good. The same sort of an argument was made to the court in *Loan Association v. Topeka, supra,* but the court rejected it, saying at page 665:

> "If it be said that a benefit results to the local public of a town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the innkeeper, the banker, the builder, the steamboat owner are equally promoters of the public good, and equally deserving the aid of the citizens by forced contributions."

While many assert that our economic difficulties are attributable to the condition of the farmer, there are still others who attribute it to the condition of the manufacturers or the condition of our export trade. If a tax can be levied to pay a bounty to farmers no reason is perceived why a tax may not be constitutionally levied to pay bounties to manu-

facturers or to those engaged in export trade or those engaged in any of our basic industries.

Finally, the processing tax provisions (Sec. 9),* even as altered by the amendment of August 24, 1935, violate Article I, Section 1, of the Constitution in making an unlawful delegation of legislative power to the Secretary of Agriculture. While the amendment provides for an initial processing tax on rice of 1c per pound (or $1.62 per barrel), nevertheless, under Sec. 9 the Secretary is given full power at any time to reduce, increase, modify or eliminate the tax, not by any practical standard, but largely by his opinion or prophecy of future prices and conditions. Where all such questions as to the duration of the tax and its increase or decrease or elimination are thus left to be resolved by the Secretary of Agriculture alone, it is clear that the Act still runs counter to Article I, Section 1, and is therefore unconstitutional. *Schechter Poultry Corporation, supra; Panama Refining Co. v. Ryan* (1934), 293 U. S. 388.

Point F

Certiorari Should Be Granted at the Present Time.

The opinion and order of the Circuit Court of Appeals, while interlocutory in form, in truth and in fact finally disposed of the case upon the merits. When it held that petitioner had a remedy at law and that the Courts below were without jurisdiction to grant the injunction prayed for (R. 98) the result

*Set out in Appendix D.

was a denial of all the relief sought by petitioner. Since the case will not come up for a hearing on its merits in the ordinary course of events until after the lapse of six or seven months the subject of the suit will be destroyed, the case become moot, and petitioner deprived of all right to have its case heard on the merits by any court unless this Court grants certiorari. If the order of the Circuit Court of Appeals is allowed to stand all the trial courts in the Circuit will feel bound thereby and will of necessity dismiss all bills filed in the Circuit for the purpose of testing the constitutionality of the taxes levied by the Agricultural Adjustment Act, as amended, with the result that not only your petitioner, but all other citizens living within the States of Texas, Louisiana, Mississippi, Alabama, Georgia and Florida be effectively deprived of any opportunity of testing the validity of this statute. There can be no question but that the constitutional questions raised in this case are grave and of national importance and this case involves an unprecedented situation. That the action of the Circuit Court of Appeals in denying the motion for an injunction to preserve the *status quo* pending appeal was wrong is plainly indicated by the fact that its action is contrary to the action of the Circuit Courts of Appeals for the Second, Sixth, Eighth, Ninth and Tenth Circuits, in granting injunctions in similar cases. It stands alone, unsupported by the decision of any other circuit. Its error can be corrected only by this Court now granting certiorari since there is

now before this Honorable Court a cause involving the constitutionality of the Agricultural Adjustment Act, which said cause is set for oral argument on December 9, 1935, and which will in the ordinary course of events be decided long prior to the time when this case would come up for hearing in the Circuit Court of Appeals. Without a writ of certiorari from this Honorable Court petitioner will have been compelled meanwhile to pay the taxes and if the Act be held unconstitutional its case would become moot and the taxes paid by it probably forever lost.

While the power to bring up a case pending in the Circuit Court of Appeals prior to final action in that Court is one to be sparingly exercised, the power nevertheless exists. *American Construction Company v. Jacksonville Railway* (1893), 148 U. S. 372. This Court said in *In Re Chetwood* (1897), 165 U. S. 443, 462:

> "And although, as observed in that case, this writ has not been issued as freely by this court as by the Court of Queen's Bench in England, and, prior to the Act of March 3, 1891, C. 517, 26 Stat. 826, had been ordinarily used as an auxiliary process merely, yet, whenever the circumstances imperatively demand that form of interposition the writ may be allowed, as at common law, to correct excesses of jurisdiction *and in furtherance of justice.*"

Likewise in *Harriman v. Northern Securities Company* (1905), 197 U. S. 244, 286, where the decree of the Circuit Court of Appeals actually dis-

posed of the entire case, although interlocutory in form, this Court granted certiorari. Other cases in which this Court has granted certiorari prior to a final decree in the Circuit Court of Appeals are *Denver v. New York Trust Company* (1913), 229 U. S. 123, 133; *Spiller v. Atchison, T. & S. F. Railway Company* (1920), 253 U. S. 117, 120; and *Dupont Powder Company v. Mastland* (1917), 244 U. S. 100. And in *The Three Friends* (1897), 166 U. S. 1, 49, this Court reviewed a decision of the District Court prior to action by the Circuit Court of Appeals on the appeal pending therein.

CONCLUSION

It is therefore respectfully submitted that this case is such as to call for the exercise by this Court of its supervisory powers. If the decisions of the District Court and the Circuit Court of Appeals stand, the result will be that petitioner will be deprived of its property without due process of law, and will be so deprived without any opportunity to test in the Courts the constitutional rights asserted in its bill of complaint. Unless this Honorable Court exercises such supervisory powers prior to the entry of a final decree in the Circuit Court of Appeals the subject matter of the suit will be destroyed, the suit become moot, and petitioner forever deprived of its constitutional rights. This Court should, therefore, review forthwith the decision of

the United States Circuit Court of Appeals for the Fifth Circuit and the decision of the District Court of the United States for the Eastern District of Louisiana.

Respectfully submitted,

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APPENDIX A

R. S. ART. 3224

No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

* * *

SECTION 21 OF AGRICULTURAL ADJUSTMENT ACT

SEC. 21 (*a*) No suit, action, or proceedings (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (*d*) of this section, may be reserved in the court's order.

(*b*) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regu-

lations of the Secretary with the approval of the President prior to the date of the adoption of this amendment, are hereby legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which have accrued and remain unpaid on the date of the adoption of this amendment shall be assessed and collected pursuant to Section 19, and to the provisions of law made applicable thereby. Nothing in this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary of Agriculture or of the President done or made prior to the date of the adoption of this amendment.

(*c*) The making of rental and benefit payments under this title, prior to the date of the adoption of this amendment, as determined, prescribed, proclaimed and made effective by the proclamations of the Secretary of Agriculture or of the President or by regulations of the Secretary, and the initiation, if formally approved by the Secretary of Agriculture prior to such date of adjustment programs under Section 8 (1) of this title, and the making of agreements with producers prior to such date, and the adoption of other voluntary methods prior to such date, by the Secretary of Agriculture under this title, and rental and benefit payments made pursuant thereto, are hereby legalized and ratified, and the making of all such agreements and payments, the initiation of such programs, and the adoption of all such methods prior to such date are hereby legalized, ratified, and confirmed as fully to all intents and purposes as if each such agreement, program, method, and payment had been specifically author-

ized and made effective and the rate and amount thereof fixed specifically by prior Act of Congress.

(*d*) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considerd by the court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (*a*) or (*c*) of Section 15, Section 16, or Section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of Section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by rea-

son of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be refunded or credited to any person (not a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (*a*) and (*b*) of Section 16, had the tax terminated by proclamation pursuant to the provisions of Section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish to the satisfaction of the Commissioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held

invalid a claim therefor (conforming to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2) no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, or jurisdiction of such courts based upon the amount in controversy.

(*e*) In connection with the establishment, by any claimant, of the facts required to be established in subsection (*d*) of this section, the Commissioner of Internal Revenue is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda, relative to any matter affecting the findings to be made by the Commissioner pursuant to subsection (*d*) of this section, to require the attendance of the claimant or of any officer or employee of the claimant, or the attendance of any other person having knowledge in the premises, and to take, or cause to be taken, his testimony with reference to any such matter, with power to administer oaths to such person or persons. It shall be lawful for the Commissioner, or any collector designated

by him, to summon witnesses on behalf of the United States or of any claimant to appear before the Commissioner, or before any person designated by him, at a time and place named in the summons, and to produce such books, papers, correspondence, memoranda, or other records as the Commissioner may deem relevant or material, and to give testimony or answer interrogatories, under oath, relating to any matter affecting the findings to be made by the Commissioner pursuant to subsection (*d*) of this section. The provisions of Revised Statutes 3174 and of Revised Statutes 3175 shall be applicable with respect to any summons issued pursuant to the provisions of this subsection. Any witness summoned under this subsection shall be paid, by the party on whose behalf such witness was summoned, the same fees and mileage as are paid witnesses in the courts of the United States. All information obtained by the Commissioner pursuant to this subsection shall be available to the Secretary of Agriculture upon written request therefor. Such information shall be kept confidential by all officers and employees of the Department of Agriculture, and any such officer or employee who violates this requirement shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both, and shall be removed from office.

(*f*) No refund, credit, or abatement shall be made or allowed of the amount of any tax, under Section 15, or Section 17, unless, within one year after the right to such refund, credit, or abatement has accrued, a claim for such refund, credit, or abatement (conforming to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled to such refund, credit, or abatement, except that if the right to any such refund, credit, or abatement accrued prior to the date of the adoption of this amendment, then

such one-year period shall be computed from the date of this amendment. No interest shall be allowed or paid, or included in any judgment, with respect to any such claim for refund or credit.

(*g*) The provisions of Section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax, or any refund or credit authorized by subsection (*a*) or (*c*) of Section 15, Section 16, or Section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of Section 317 of the Tariff Act of 1930.

APPENDIX B

Provisions of Title 26, U. S. C. Dealing With Collection of Taxes By Distraint

Sec. 115. *Lien for Taxes.* (*a*) If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. (Balance of Section deals with recording of lien and giving of releases.) (R. S. Sec. 3186; Mar. 1, 1879, C. 125, Sec. 3, 20 Stat. 331; Mar. 4, 1913, C. 166, 37 Stat. 1016; Feb. 26, 1925, C. 344, 43 Stat. 994; May 29, 1928, 8 a.m., C. 852, Title IV, Sec. 613, 45 Stat.)

116. *Distraint for Taxes.* If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with 5 per centum additional thereto, and interest as aforesaid, by distraint and sale, in the manner hereafter provided, of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid. (Balance of Section deals with exempt property.) (R. S. Sec. 3187; June 2, 1924, 4:01 p.m., C. 234, Sec. 1016, 43 Stat. 343.)

117. *Same; Levy.* In such case of neglect or refusal, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property

and rights to property, except such as are exempt by Section 116 of this title, belonging to such person, or on which the said lien exists, for the payment of the sum due as aforesaid, with interest and penalty for nonpayment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy. (R. S. Sec. 3188.)

118. *Same; Exhibit of Evidences Relating to Property.* All persons, and officers of companies or corporations, are required, on demand of a collector or deputy collector about to distrain or having distrained on any property, or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the tax due as aforesaid. (R. S. Sec. 3189.)

119. *Same; Proceedings On.* When distraint is made, as aforesaid, the officer charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the officer making such distraint, shall be left with the owner or possessor or such goods or effects, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded, and the time and place of sale; and the said officer shall forthwith cause a notification to be published in some newspaper within the county wherein said distraint is made, if a newspaper is published in said county, or to be publicly posted at the post office, if there be one within five miles nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Such notice shall specify the articles distrained, and the time and place for the sale thereof. Such time shall not be less than ten nor more than twenty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notice as herein

provided, and the place proposed for the sale shall not be more than five miles distant from the place of making such distraint. Said sale may be adjourned from time to time by said officer, if he deems it advisable, but not for a time to exceed in all thirty days. (R. S. Sec. 3190.)

120. *Same; Sale of Property Subject to Tax.* When property subject to tax, but upon which the tax has not been paid, is seized upon distraint and sold, the amount of such tax shall, after deducting the expenses of such sale, be first appropriated out of the proceeds thereof to the payment of the tax. And if no assessment of such tax has been made upon such property, the collector shall make a return thereof in the form required by law, and the Commissioner of Internal Revenue shall assess the tax thereon. (R. S. Sec. 3191.)

121. *Same; Sale of Property; Purchase for United States.* When any personal property is advertised for sale under distraint as aforesaid, the officer making the seizure shall proceed to sell such property at a public auction, offering the same at a minimum price, including the expenses of making the levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the officer conducting the sale may declare the same to be purchased by him for the United States. The property so purchased may be sold by the collector within whose district the sale was made under such regulations as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. The collector shall render to the Commissioner a distinct account of all charges incurred in such sales, and, in case of resale, shall pay into the Treasury the proceeds as provided in Section 3210 of the Revised Statutes, as amended (R. S. 3192, as amended May 10, 1934, 11:40 a.m., C. 277, Sec. 508, 48 Stat.)

122. *Same; Restoration of Property on Payment Before Sale.* (This merely provides for return of property distrained upon if tax is paid prior to sale.) (R. S. 3193.)

123. *Same; Effect of Certificate of Sale.* In all cases of sale, as aforesaid, the certificate of such sale shall be prima-facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale, and shall transfer to the purchaser all right, title, and interest of such delinquent in and to the property sold; and where such property consists of stocks, said certificate shall be notice, when received, to any corporation, company, or association of said transfer, and shall be authority to such corporation, company, or association to record the same on their books and records in the same manner as if transferred or assigned by the party holding the same, in lieu of any original or prior certificates, which shall be void, whether canceled or not. And said certificates, where the subject of sale is securities or other evidences of debt, shall be good and valid receipts to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt. (R. S. Sec. 3194.)

124. *Same; When Property Not Divisible.* (This deals with special case of indivisible property and allows sale of the whole even though its value exceeds amount of the tax. (R. S. Sec. 3195; June 2, 1924, 4:01 p.m., C. 234, Sec. 1031 (*a*), 43 Stat. 351; re-enacted Jan. 26, 1926, 10:25 a.m., C. 27, Title XI, Sec. 1128(a), 144 Stat. 124.)

125. *Real Estate; Sale to Satisfy Taxes.* When goods, chattels, or effects sufficient to satisfy the taxes imposed upon any person are not found by the collector or deputy collector, he is authorized to collect the same by seizure and sale of real estate. (R. S. Sec. 3196.)

126. *Same; Proceedings.* The officer making the seizure mentioned in Section 125 of this title shall give notice to the person whose estate it is proposed to sell by giving him in hand, or leaving at his last or usual place of abode, if he has any such within the collection district where said estate is situated, a notice, in writing, stating what particular estate is to be sold, describing the same with reasonable certainty, and the time when and place where said officer proposes to sell the same; which time shall not be less than twenty nor more than forty days from the time of giving said notice. The said officer shall also cause a notification to the same effect to be published in some newspaper within the county where such seizure is made, if any such there be, and shall also cause a like notice to be posted at the postoffice nearest to the estate seized, and in two other public places within the county; and the place of said sale shall not be more than five miles distant from the estate seized, except by special order of the Commissioner of Internal Revenue. At the time and place appointed, the officer making such seizure shall proceed to sell the said estate at public auction, offering the same at a minimum price, including the expense of making such levy, and all charges for advertising and an officer's fee of $10. (Balance of section deals with details of conducting sale.) (R. S. Sec. 3197; Feb. 27, 1877, C. 69, Sec. 1, 19 Stat. 248; Mar. 1, 1879, C. 125, Sec. 3, 20 Stat. 331; May 28, 1896, C. 252, 29 Stat. 179; Mar. 3, 1905, C. 1483, Sec. 1, 33 Stat. 1207; July 19, 1919, C. 24, Sec. 1, 41 Stat. 209.)

127. *Same; Certificate of Purchase; Deed.* (This provides for execution of deed by the collector to the purchaser.) (R. S. Sec. 3198.)

128. *Same; Deed Prima-Facie Evidence.* The deed of sale given in pursuance of Section 127 of this title shall be prima-facie evidence of the facts therein stated; and if the proceedings of the officer as set

forth have been substantially in accordance with the provisions of law, shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real estate thus sold at the time the lien of the United States attached thereto. (R. S. Sec. 3199.)

129. *Same; Place of Seizure (and Sale).* Any collector or deputy collector may, for the collection of taxes imposed upon any person, and committed to him for collection, seize and sell any of the property, real or personal (except property exempt from distraint and sale, under Section 3187 of the Revised Statutes, or any right or interest therein, of such person situated in any other collection district within the State in which such officer resides, notwithstanding the provisions of Section 3209 of the Revised Statutes; and his proceedings in relation thereto shall have the same effect as if the same were had in his proper collection district. (R. S. Sec. 3200; amended Jan. 26, 1926, 11:25 a.m., Title XI, Sec. 1129, 44 Stat. 125.)

130. *Same; Redemption Prior to Sale.* (This provides for return of property seized on payment of tax.) (R. S. Sec. 3201.)

131. *Same; Redemption After Sale.* (This provides for redemption after sale by payment to purchaser, within one year after the sale, of the purchase price with interest at 20% per annum.) (R. S. 3202.)

APPENDIX C

PENALTY PROVISIONS

SECTION 19(b) of the Agricultural Adjustment Act:

> "SEC 19. * * * (*b*) All provisions of law, including penalties, applicable with respect to the taxes imposed by Section 600 of the Revenue Act of 1926, and the provisions of Section 626 of the Revenue Act of 1932, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable in respect of taxes imposed by this title: * * * ."

SECTION 1114 of 1926 Revenue Act, applicable with respect to taxes imposed by Section 600 of that Act:

> "SEC. 1114. (*a*) Any person required under this Act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act, who wilfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisioned for not more than one year, or both, together with the costs of prosecution.
>
> "(*b*) Any person required under this Act to collect, account for and pay over any tax imposed by this Act, who willfully fails to collect or truthfully account for and pay over such tax,

and any person who willfully attempts in any manner to evade or defeat any tax imposed by this Act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

"(*c*) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal-revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

"(*d*) Any person who willfully fails to pay, collect, or truthfully account for and pay over, any tax imposed by Titles IV, V, VI, VII, VIII, and IX, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of Section 3176 of the Revised Statutes, as amended, or for any offense for which a penalty has been recovered under Section 3256 of the Revised Statutes.

"(*e*) Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

"(*f*) The term 'person' as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs."

APPENDIX D

PROCESSING TAX PROVISIONS OF AGRICULTURAL ADJUSTMENT ACT, AS AMENDED, AS APPLIED TO RICE

SEC. 9. (*a*) To obtain revenue for extraordinary expenses incurred by reason of the national economic emergency, there shall be levied processing taxes as hereinafter provided. When the Secretary of Agriculture determines that any one or more payments authorized to be made under Section 8 are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation; except that * * * (2) in the case of rice, the Secretary of Agriculture shall, before April 1, 1935, proclaim that rental or benefit payments are to be made with respect thereto, and the processing tax shall be in effect on and after April 1, 1935. * * * In the case of rice, the period from August 1 to July 31, both inclusive, shall be considered to be the marketing year. The processing tax shall be levied, assessed, and collected upon the first domestic processing of the commodity, whether of domestic production or imported, and shall be paid by the processor. The rate of tax shall conform to the requirements of subsection (*b*). Such rate shall be determined by the Secretary of Agriculture as of the date the tax first takes effect, and the rate so determined shall, at such intervals as the Secretary finds necessary to effectuate the declared policy, be adjusted by him to conform to such requirements. The processing tax shall terminate at the end of the marketing year current at the time the Secretary proclaims that all payments authorized under Section 8 which are in effect are to be discontinued with

respect to such commodity. The marketing year for each commodity shall be ascertained and prescribed by regulations of the Secretary of Agriculture: * * *

(*b*) (1) The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, plus such percentage of such difference, not to exceed 20 per centum, as the Secretary of Agriculture may determine will result in the collection, in any marketing year with respect to which such rate of tax may be in effect pursuant to the provisions of this title, of an amount of tax equal to (A) the amount of credits or refunds which he estimates will be allowed or made during such period pursuant to section 15(c) with respect to the commodity (B) the amount of tax which he estimates would have been collected during such period upon all processing of such commodity which are exempt from tax by reason of the fact that such processings are done by or for a State, or a political subdivision or an institution thereof, had such processings been subject to tax. If, prior to the time the tax takes effect, or at any time thereafter, the Secretary has reason to believe that the tax at such rate, or at the then existing rate, on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, will cause or is causing such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depression of the farm price of the commodity, then the Secretary shall cause an appropriate investigation to be made, and afford due notice and opportunity for hearing to interested parties. If thereupon the Secretary determines and proclaims that any such result will oc-

cur or is occurring, then the processing tax on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be at such lower rate or rates as he determines and proclaims will prevent such accumulation of surplus stocks and depression of the farm price of the commodity, and the tax shall remain during its effective period at such lower rate until the Secretary, after due notice and opportunity for hearing to interested parties, determines and proclaims that an increase in the rate of such tax will not cause such accumulation of surplus stocks or depression of the farm price of the commodity. Thereafter the processing tax shall be at the highest rate which the Secretary determines will not cause such accumulation of surplus stocks or depression of the farm price of the commodity, but it shall not be higher than the rate provided in the first sentence of this paragraph. * * *

SPECIFIC TAX RATE—RICE

(3) For the period from April 1, 1935, to July 31, 1936, both inclusive, the processing tax with respect to rice shall be levied, assessed, collected, and paid at the rate of 1 cent per pound of rough rice. * * *

(6) (A) Any rate of tax which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6) on the processing of any commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be decreased (including a decrease to zero) in accordance with the formulae, standards, and requirements of paragraph (1) of

this subsection, in order to prevent such reduction in the quantity of such commodity or the products thereof domestically consumed as will result in the accumulation of surplus stocks of such commodity or the products thereof or in the depression of the farm price of the commodity, and shall thereafter be increased in accordance with the provisions of paragraph (1) of this subsection but subject to the provisions of subdivision (B) of this paragraph (6).

(B) If the average farm price of any commodity, the rate of tax on the processing of which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or is established pursuant to this paragraph (6), during any period of twelve successive months ending after July 1, 1935, consisting of the first ten months of any marketing year and the last two months of the preceding marketing year—

(*i*) is equal to, or exceeds by 10 per centum or less, the fair exchange value thereof, or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 20 per centum of the fair exchange value thereof.

(*ii*) exceeds by more than 10 per centum, but not more than 20 per centum, the fair exchange value thereof, the rate of such tax shall subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 15 per centum of the fair exchange value thereof.

(*iii*) exceeds by more than 20 per centum the fair exchange value thereof, the rate of such

tax shall (subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 10 per centum of the fair exchange value thereof.

(C) Any rate of tax which has been adjusted pursuant to this paragraph (6) shall remain at such adjusted rate unless further adjusted or terminated pursuant to this paragraph (6), until December 31, 1937, or until July 31, 1936, in the case of rice.

(D) In accordance with the formulae, standards, and requirements prescribed in this title, any rate of tax prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6) shall be increased.

(E) Any tax, the rate of which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6), shall terminate pursuant to proclamation as provided in section 9 (a) of this title or pursuant to section 13 of this title. Any such tax with respect to any basic commodity which terminates pursuant to proclamation as provided in section 9 (a) of this title shall again become effective at the rate prescribed in paragraph (2), (3), (4) or (5) of this subsection, subject however, to the provisions of subdivisions (A) and (B) of this paragraph (6), from the beginning of the marketing year for such commodity next following the date of a new proclamation by the Secretary as provided in section 9 (a) of this title, if such marketing year begins prior to December 31, 1937, or prior to July 31, 1936, in the case of rice, and shall remain at such rate until altered or terminated pursuant to the provisions of section 9 or terminated pursuant to section 13 of this title. * * *

(G) If the applicability to any person or circumstances of any tax, the rate of which is fixed in pursuance of this paragraph (6), is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be levied, assessed, collected, and paid (in lieu of all rates of tax fixed in pursuance of this paragraph (6) with respect to all tax liabilities incurred under this title on or after the effective date of each of the rates of tax fixed in pursuance of this paragraph (6)), rates of tax fixed under paragraph (2), (3), (4) or (5), and such rates shall be in effect (unless the particular tax is terminated pursuant to proclamation, as provided in section 9 (a) or pursuant to section (13) until altered by Act of Congress; except that, for any period prior to the effective date of such holding of invalidity, the amount of tax which represents the difference between the tax at the rate fixed in pursuance of this paragraph (6) and the tax at the rate fixed under paragraphs (2), (3), (4) and (5) shall not be levied, assessed, collected, or paid.

RICE—SPECIAL RULE

(7) In the case of rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to a processor, except that, where the producer processes his own rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to the place of processing. * * *

(*c*) For the purposes of part 2 of this title, the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period

specified in section 2; and, in the case of all commodities where the base period is the pre-war period, August 1909 to July 1914, will also reflect interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during said base period; and the current average farm price and the fair exchange value shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture. The rate of tax upon the processing of any commodity, in effect on the date on which this amendment is adopted, shall not be affected by the adoption of this amendment and shall not be required to be adjusted or altered, unless the Secretary of Agriculture finds that it is necessary to adjust or alter any such rate pursuant to section 9 (a) of this title.

(*d*) As used in part 2 of this title— * * * .

(7) In the case of rice—

(A) The term "rough rice" means rice in that condition which is usual and customary when delivered by the producer to a processor.

(B) The term "processing" means the cleaning, shelling, milling (including custom milling for toll as well as commercial milling), grinding, rolling, or other processing (except grinding or cracking by or for the producer thereof for feed for his own livestock, cleaning by or directly for a producer for seed purposes, and drying) of rough rice; and in the case of rough rice with respect to which a tax-payment warrant has been previously issued or applied for by application then pending, the term "processing" means any one of the above mentioned processings or any preparation or handling in connection with the sale or other disposition thereof.

(C) The term "co-operating producer" means

any person (including any share-tenant or share-cropper) whom the Secretary of Agriculture finds to be willing to participate in the 1935 production-adjustment program for rice.

(D) The term "processor," as used in subsection (b-1) of section 15 of this title, means any person (including a co-operative association of producers) engaged in the processing of rice on a commercial basis (including custom milling for toll as well as commercial milling).

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Supreme Court of the United States

OCTOBER TERM, 1935

No. 579

UNITED RICE MILLING PRODUCTS CO., INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND SUPPORTING BRIEF THEREON.

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No.....

IN THE

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PETITION OF UNITED RICE MILLING PRODUCTS CO., INC., FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

MAY IT PLEASE THE COURT:

Your petitioner, United Rice Milling Products Co., Inc., respectfully prays for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, to hear this cause prior to its decision by the Circuit Court of Appeals and to review the decision of the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, entered in this cause on October 28, 1935, and further to review the decision of the Circuit Court of Appeals in denying

the application of petitioner for a preliminary injunction pending the appeal of said cause in said Circuit Court of Appeals. Petitioner respectfully shows this Honorable Court:

1.

Questions Presented.

(*a*) Is the so-called Agricultural Adjustment Act, as amended on August 24, 1935, constitutional?

(*b*) Does Section 21(d) of said Act deprive petitioner of an adequate remedy at law?

(*c*) Does Article 3224 R. S. or Section 21(a) of said Act forbid the granting of an injunction when petitioner has no adequate remedy at law?

(*d*) If Section 21(a) of said Act forbids an injunction in a case where petitioner has no adequate remedy at law, is said Section 21(a) constitutional?

(*e*) If Congress may constitutionally deprive the Courts of jurisdiction to enjoin the collection of illegal taxes and at the same time deprive the taxpayer of any legal remedy to recover such illegal taxes, may the summary proceedings provided in Sections 115 to 131, Title 26, U. S. C., as amended, be constitutionally employed for the collection of such illegal taxes?

2.

Summary Statement of the Matter Involved.

Petitioner owns and operates a rice mill at New Orleans, Louisiana. Under the Act of the 73rd

Congress, P. L. No. 10, approved on May 12, 1933, as amended, known as the Agricultural Adjustment Act, there is imposed a processing tax of 1c per pound upon the first processing or milling of rough rice. The amount of tax shown to be due by petitioner in its return filed for the month of September, 1935, was $31,839.40. This tax was due and payable to respondent on October 30, 1935. October 28, 1935, petitioner filed its bill in the District Court to restrain the collection of this tax and any tax which might become due in subsequent months on the ground that said tax was unconstitutional, that petitioner was without adequate remedy at law, and that without such injunction it would be irreparably damaged. (R. 2.) Respondent filed a motion to dismiss on the ground that the Court had been deprived of jurisdiction by Art. 3224, U. S. R. S., and Section 21(a) of the Agricultural Adjustment Act. (R. 54.) Seven similar suits were consolidated with this by Court order (R. 58) and the Court heard at the same time petitioner's motion for a preliminary injunction and respondent's motion to dismiss for want of jurisdiction. At the hearing petitioner introduced two affidavits in support of its allegation that, due to the peculiar nature of the rice business, it was impossible to accurately determine the profit or loss resulting from the processing and sale of any given lot of rice. (R. 60, 65.) The affidavits further showed that it is impossible to prove what part, if any, of the processing tax is passed forward to the consumer or back to the producer or what part is borne by the miller. Respondent intro-

duced the joint affidavit of three deputy Internal Revenue Collectors which affidavit was inconsistent with the affidavits of petitioner in only one respect. (R. 75.) At the conclusion of the hearing the Court denied petitioner's motion for a preliminary injunction and granted respondent's motion to dismiss upon the ground that the Court was deprived of jurisdiction by Article 3224, U. S. R. S., and Section 21(a) of said Act. (R. 79.) Said Article 3224* and Section 21(a)* forbid the granting of an injunction to restrain the collection of any tax, and of the processing tax here involved, respectively. Under Section 21(d)* of said Agricultural Adjustment Act it is provided that no tax collected under the Act may be recovered except upon proof satisfactory to the Commissioner of Internal Revenue that the payer of the tax had not, directly or indirectly, included such amount in the price of the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee of the commodity, and that the price paid by the taxpayer for the unprocessed commodity was not reduced by any part of such amount. The bill below, and supporting affidavits, show the manner in which rough rice is milled and the manner in which it is sold, and that from any given lot of rough rice many different grades and qualities of clean rice are produced. The usual and customary method of selling rice is to sell it on samples made up of mixtures of different lots of clean rice which in turn are derived from differ-

*Set out in Appendix to Brief.

ent lots of rough rice purchased from different parties, and when an order for clean rice is received, based on any particular sample, the miller fills the order of clean rice from a mixture from various lots of clean rice. Many sales are made during a given season made up of various mixtures of clean rice, and there is practically an unlimited combination of lots of clean rice that go into the various sales. There is no way of accurately allocating to the various lots of rice going into any given mix any definite part of the price received for the entire mix. (R. 16-21.) Petitioner's sworn bill and affidavits showed that for these reasons it is impossible for petitioner or any other rice miller to make the proof required for recovery of the tax paid, if the law be held unconstitutional, even if it were otherwise possible to make such proof. Petitioner's sworn bill alleged that unless the injunction prayed for was granted: (1) It would be without adequate remedy at law to recover the taxes paid in the event they be held unconstitutional; (2) if any legal remedy existed, it would entail a multiplicity of suits; (3) it would become subject to heavy civil and criminal penalties and (4) it would suffer great and irreparable damages for specific reasons set out. (R. 15, 16, 23.) Respondent filed no answer denying any of these allegations. Petitioner alleged below that the said Section 21(d) did not apply to its suit because petitioner had no adequate remedy at law. It alleged further that, if said section be interpreted as prohibiting the injunction prayed for, the said

section, together with the other provisions of the Act, violated the Fifth Amendment to the Constitution in that said unconstitutional taxes would be collected from petitioner and petitioner would have no remedy by which it could recover said taxes, if they were unlawful, and thereby petitioner would be deprived of the right to test the constitutionality of the taxes. (R. 23.) Petitioner offered to give such security as the Court might require if the injunction were granted. (R. 24.) There was neither pleading nor proof that the granting of the injunction would in any wise injure respondent if the tax were ultimately held constitutional.

On October 29, 1935, petitioner was allowed an appeal. (R. 81.) On the same day petitioner applied for, and was denied, an injunction pending appeal. (R. 80.) The record was duly filed in the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, on November 4, 1935, being Cause No. 7946 on the docket of that Court. On November 4, 1935, petitioner applied to said Circuit Court of Appeals for an injunction against the respondent pending the hearing of its appeal (R. 87), but the Circuit Court of Appeals on November 5, 1935, denied the application. (R. 98.)

3.

Reasons Relied Upon for the Allowance of the Writ.

This case, with its companion cases, presents an entirely unprecedented situation. It presents questions of gravity and importance. It involves the

constitutionality of an important Federal statute and the rulings of the Court below, insofar as they may be taken to have held the statute constitutional, are probably in conflict with the decisions of this Court in *Loan Association v. Topeka* (1874), 20 Wall. 655; *Child Labor Tax Case* (1922), 259 U. S. 20; *Hill v. Wallace* (1922), 259 U. S. 44; *Hammer v. Dagenhart* (1918), 247 U. S. 251; and *Schechter Poultry Corporation v. United States* (1935), 295 U. S. 495; and contrary to the decision of the United States Circuit Court of Appeals for the Second Circuit in *Butler et al. v. United States* (1935), 78 Fed. (2nd) 1. The District Court and the Circuit Court of Appeals in holding that Congress may constitutionally forbid the granting of an injunction against summary collection of taxes, while at the same time depriving the taxpayer of any adequate remedy at law, presents a constitutional question of great importance never decided by this Court and a question which should be definitely decided. Though this question has never been *directly* decided by this Court, the decisions of the Courts below probably conflict with the decisions of this Honorable Court in *Truax v. Corrigan* (1921), 257 U. S. 312; *Brinkerhoff-Faris Trust & Savings Company v. Hill* (1930), 281 U. S. 673, and inferentially *Graham & Foster v. Goodcell* (1931), 282 U. S. 409, 430, 431; *Michaelson v. United States* (1924), 266 U. S. 42, 64, 65, 66, and *Phillips v. Commissioner* (1931), 283 U. S. 589, 596. This holding was particularly erroneous when the respondent was, at the same time,

authorized to collect the tax by summary proceedings under Sections 115 to 131, Title 26, U. S. C., as amended.

In holding that Article 3224, U. S. R. S., and Section 21(a) of said Act deprive the courts of jurisdiction to grant an injunction under the unusual and extraordinary circumstances of this case, the courts below decided an important question of Federal law in a way probably in conflict with the decisions of this Honorable Court in *Hill v. Wallace* (1922), 259 U. S. 44, and *Miller, Collector, v. Standard Nut Margarine Company* (1932), 284 U. S. 498, and in conflict with the unreported decisions of the Second, Sixth, Eighth, Ninth and Tenth Circuit Courts of Appeals, which granted injunctions pending appeal in cases similar to the present case.

The District Court, in refusing to grant petitioner's motion for a preliminary injunction, and in refusing to grant petitioner's motion for an injunction pending appeal, and the Circuit Court of Appeals in refusing to grant petitioner's motion for an injunction pending appeal, have so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Honorable Court's power of supervision and this action of the courts below is probably in conflict with the decision of this Honorable Court in *Ohio Oil Company v. Conway* (1929), 279 U. S. 813, and is in conflict with the holdings of every other Circuit Court of Appeals which has passed upon this question, to wit, the Circuit Courts of Appeals for the Second, Sixth, Eighth, Ninth and Tenth Circuits.

4.

Reasons Relied Upon for the Allowance of Writ Before Action on the Merits by the Circuit Court of Appeals.

This case, with its companion cases, presents a situation unparalleled in American history. Under the provisions of Sections 115 to 131, Title 26, U. S. C., as amended, the respondent is armed with weapons for the immediate forcible collection of the tax from petitioner, and those similarly situated, which they are powerless to resist. The District Court and Circuit Court of Appeals below have, contrary to the decisions of all other Circuit Courts of Appeals passing upon the question, held themselves deprived of any jurisdiction whatsoever to grant petitioner any relief. In the ordinary course of events it will be six or seven months before petitioner's appeal to the Circuit Court of Appeals will be heard on the merits. Meanwhile, through collection of the tax the subject-matter of the appeal may be destroyed, and the case become moot before a hearing may be had in the Circuit Court of Appeals. In addition, the order of the court below, though apparently an interlocutory order, has the effect of finally disposing of the appeal on the merits. The questions involved are of great national importance, and deserve the prompt consideration of this Honorable Court. This petition raises important questions of constitutional law not raised by any other petition now before this Court, and particularly it raises the question whether the provisions of Sections 115 to 131, Title 26, U. S. C., as

amended, are constitutional, if it be held that Congress may constitutionally deprive a taxpayer of all adequate remedy at law to recover taxes illegally collected while at the same time forbidding the granting of an injunction to restrain their collection. Hundreds of similar suits throughout the country involve this question, as well as the others herein raised, and the situation thus presented is so unusual and unprecedented as to justify this Honorable Court in requiring the record below to be certified to it forthwith for decision.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari may issue out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Fifth Circuit commanding said court to certify and send to this Court, on a day certain, to be therein designated, a full and complete Transcript of the Record and all of the proceedings in the Circuit Court of Appeals in said cause entitled United Rice Milling Products Co., Inc., Appellant, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Appellee, No. 7946 on its docket, to the end that said cause may be reviewed and determined by this Court as provided by Section 240 of the Judicial Code, as amended, and that your petitioner may have such other and further relief or remedy in the premises as this Court may deem appropriate and in conformity with said provisions of the Judicial Code, and that said judgment of the

District Court be reversed by this Honorable Court and such relief granted as is appropriate to the cause.

UNITED RICE MILLING PRODUCTS CO., INC.,

By HOMER L. BRUCE,

JOHN P. BULLINGTON,
Attorneys for Petitioner.

Of Counsel,
BAKER, BOTTS, ANDREWS & WHARTON,
Houston, Texas.

No.....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

UNITED RICE MILLING PRODUCTS CO., INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

The Opinions of the Courts Below.

The District Court wrote no opinion and the Circuit Court of Appeals has not yet rendered any decision on the merits of the appeal. The *per curiam* opinion of the Court denying the injunction pending appeal is found on page 98 of the record.

II.

Jurisdiction.

(1) Jurisdiction of this cause is conferred upon this Honorable Court by *Judicial Code, Section* 240, *as amended; United States Code, Title* 28, *Section* 347.

(2) The date of the judgment of the Trial Court to be reviewed is October 28, 1935 (R. 79), the date of the order of the Circuit Court of Appeals denying the injunction pending appeal sought to be reviewed is November 5, 1935. (R. 98.)

(3) The power of this Honorable Court to review the case prior to a disposition of it by the Circuit Court of Appeals and to review the action of the Circuit Court of Appeals in refusing to grant an interlocutory order to preserve the *status quo* is sustained by the following, among other, cases:

The Three Friends (1897), 166 U. S. 1, 49.
Denver v. New York Trust Company (1913), 229 U. S. 123, 133.
Harriman v. Northern Securities Company (1905), 197 U. S. 244, 286.
American Construction Company v. Jacksonville Railway (1893), 148 U. S. 372, 384.
Forsyth v. Hammon (1897), 166 U. S. 506, 513.
In re Chetwood (1897), 165 U. S. 443, 462.
McClellan v. Carland (1910), 217 U. S. 268, 277.
Hanover Star Milling Company v. Metcalf (1916), 240 U. S. 403, 408.
Gay v. Ruff (1934), 292 U. S. 25, 30.

III.

Statement of the Case.

A full statement of the case has been given under heading 2 in the petition and in the interest of brevity the statement is not repeated at this point.

IV.

Specification of Errors.

(1) The District Court erred in holding that it was without jurisdiction to hear petitioner's cause because of the provisions of R. S. Sec. 3224, and Sec. 21(a) of the Agricultural Adjustment Act, as amended.

(2) The District Court erred in refusing to grant petitioner a preliminary injunction pending a hearing on the merits.

(3) The District Court and Circuit Court of Appeals erred in holding that said Sec. 21(a) did not deprive petitioner of its property without due process of law contrary to the Fifth Amendment to the Constitution of the United States, in view of the allegations in the bill, admitted by the motion to dismiss, that petitioner was without remedy at law to recover the taxes paid if they were held to be illegal.

(4) The District Court and the Circuit Court of Appeals erred in holding that if said Sec. 21(a) forbade the granting of an injunction restraining the collection of the tax, and if petitioner had no remedy at law to recover the same, if it be held they were illegally collected, respondent could neverthe-

less employ the summary proceedings for immediate collection of the tax provided in Sections 115 to 131, Title 26, U. S. C., as amended, without depriving petitioner of its property without due process of law contrary to the Fifth Amendment to the Constitution of the United States.

(5) The District Court and the Circuit Court erred in holding that either or both R. S. §3224, and Sec. 21(a) of said Act prevented the granting of an injunction under the special and extraordinary circumstances presented by this case.

(6) The Circuit Court of Appeals erred in holding that petitioner had "a remedy at law to recover back any taxes illegally exacted."

(7) The Circuit Court of Appeals erred in refusing to grant petitioner an injunction to preserve the *status quo* pending its appeal from the order dismissing the bill.

(8) The Circuit Court of Appeals erred in refusing to grant petitioner an injunction pending the appeal for the purpose of preserving the appellate jurisdiction of that Court.

(9) The Circuit Court of Appeals erred in holding either or both R. S. §3224, and Sec. 21(a) of said Act "deprived the Court of jurisdiction to grant injunctive relief."

(10) The District Court and Circuit Court of Appeals erred in not holding the Agricultural Adjustment Act, as amended, to be violative of Art. 1, Sec. 1, Amendments Five and Ten of the Constitution of the United States.

Petitioner expects to rely on all of the foregoing specifications of error.

V.

ARGUMENT

Summary of the Argument.

Point A

Neither R. S. §3224, nor Sec. 21(a) of the Agricultural Adjustment Act, properly interpreted, bars injunctive relief in this case.

Point B

Sec. 21(d) of the Agricultural Adjustment Act deprives petitioner of any adequate remedy at law.

Point C

If R. S. §3224, and Sec. 21(a) of the Agricultural Adjustment Act forbid the granting of an injunction in this case, then they are unconstitutional.

Point D

The summary proceedings provided in Sections 115 to 131, Title 26, U. S. C., as amended, are unconstitutional when applied to a taxpayer who has been deprived of both legal and equitable remedies to test the constitutionality of the tax thus sought to be collected.

Point E

The Agricultural Adjustment Act, as amended, is unconstitutional.

Point F

This is a case where certiorari should be granted prior to the final decree by the Circuit Court of Appeals.

Point A

Inapplicability of R. S. §3224 and Section 21(a) of the Agricultural Adjustment Act.

In wording and in effect R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act, as amended, are for all practical purposes identical. For the convenience of the Court the two acts are here set out side by side:

R. S. §3224.	**A. A. A. Sec. 21(a).**
No suit	No suit, action or proceeding (including probate, administration, receivership, and bankruptcy proceedings)
shall be maintained in any court	shall be brought or maintained in any court
for the purpose of restraining the assessment or collection of any tax.	if such suit, action or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or

> collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment * * *.

This Court has consistently held that despite the apparently unconditional terms of R. S. §3224, injunctions against the collection of a tax may issue in proper cases. The latest expression of the Court on the point is found in *Miller v. Standard Nut Margarine Company* (1932), 284 U. S. 498, 509, where the Court said:

> "The section does not refer specifically to the rule applicable to cases involving exceptional circumstances. The general words employed are not sufficient, and it would require specific language undoubtedly disclosing that purpose, to warrant the inference that Congress intended to abrogate that salutary and well established rule. * * * It has never held the rule to be absolute, but has repeatedly indicated that extraordinary and exceptional circumstances render its provisions inapplicable. * * *.
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> " * * * * It requires no elaboration of the facts found to show that the enforcement of the Act against respondent would be arbitrary and oppressive, would destroy its business, ruin it financially and inflict loss for which it would have no remedy at law. It is clear that, by reason of the special and extraordinary facts and circumstances, Sec. 3224 does not apply."

See also Hill v. Wallace (1922), 259 U. S. 44, 62; Dodge v. Osborn, (1916), 240 U. S. 118, 121.

Section 21(a) was included in the amendment to the Act of August 24, 1935, after numerous suits to restrain the collection of the tax had been filed throughout the country in which the contention was made that the supposed tax was in fact no tax at all but a penalty. *e.g., Penn v. Glenn,* 10 Fed. Supp. 483, 484 (April 13, 1935); F. G. Vogt & Sons, Inc. v. Rothensies, 11 Fed. Supp. 225, 230 (July 17, 1935); Armour & Company v. Harrison (not yet reported, District Court, Northern District of Illinois), in which the Court said in connection with R. S. §3224:

> "Merely to call this exaction a tax does not make it a tax. It is not levied for governmental purposes; therefore, it is not a tax. Therefore, the statute has no application to it."

The obvious purpose of Congress in including this section in the amendment was to make certain its intention that the principle of R. S. §3224 should apply to suits brought to restrain collection of these particular taxes. Having expressed its intention in words practically identical with those used in R. S. §3224, the amendment must be interpreted in the light of the well settled rule that, when a statute is reenacted in the same words as a previous statute which has received a judicial interpretation, the re-enacted statute includes the previous judicial interpretation. Louisville Cement Co. v. Interstate Commerce Commission (1918), 246 U. S. 638, 644.

Further it must be interpreted in the light of the

rule that a statute, susceptible of two constructions, should be construed in such a way as not to raise doubts as to its constitutionality. *Panama R. R. Co. v. Johnson* (1924), 264 U. S. 375; *Michaelson v. United States* (1924), 266 U. S. 42. As will be pointed out hereafter, to interpret this statute in the manner in which it has been interpreted below would raise grave doubts as to its constitutionality.

Interpreting these statutes as not forbidding injunctive relief in *all* cases we may pass to a discussion of whether extraordinary and exceptional circumstances exist in this case such as would render them inapplicable.

Point B

Section 21(d) of the Agricutural Adjustment Act Deprives Petitioner of Its Remedy at Law.

Section 21(d)* forbids the return of any taxes illegally collected under the Act unless the taxpayer proves, to the satisfaction of the Commissioner, that neither the taxpayer nor any person directly or indirectly under his control has, directly or indirectly, included the amount of the tax or any part thereof in the price of the commodity with respect to which it was imposed, or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner or included any part of such amount in the charge or fee

*Printed in the appendix.

for processing, and that the price paid by the taxpayer for the commodity was not reduced by any part of the tax paid. This, obviously, was an attempt to enact into law the economic theory that the burden of any tax imposed upon a manufacturer or processor is ultimately passed on to others. In speaking of a sales tax, Mr. Justice Stone and Mr. Justice Brandeis, dissenting in *Indian Motorcycle Company v. U. S.* (1931), 283 U. S. 570, 581, said:

> "In the Panhandle Oil Case, it was held that this shifting of the burden of a State tax from the seller to the buyer was sufficient to render the tax invalid where the buyer was an agency of the United States, and it was assumed that the burden of the sales tax involved was so inevitably passed on to the buyer as to require this result. With this assumption economists would not, I believe, generally agree. Many hold that whether the burden of any tax paid by the seller is actually passed on to the buyer depends upon considerations so various and complex as to preclude the assumption *a priori* that any particular tax at any particular time is passed on. In some conditions of the market, the burden remains with the seller, or even may be shifted back from the seller to the producer by the reduction of the producer's price, rather than forward to the consumer by an increase of the seller's price."

Likewise Mr. Justice Holmes speaking for the full Court in *Lash's Products Company v. U. S.* (1929), 278 U. S. 175, 176, said:

> "The phrase 'passed the tax on' is inaccurate, as obviously the tax is laid and remains on the

> manufacturer and on him alone. Heckman & Co. v. I. S. Dawes & Son Co., 12 F. (2d) 154. The purchaser does not pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all."

A sales tax is of course easily identifiable, or capable of identification, because levied on the sale of a given identifiable object and based upon the price at which the object is sold. If the question of whether such a tax has been "passed on" is so debatable, how much more so must be the case of a tax, such as a processing tax, which is carried as a part of the processor's expenses of operation? Even more complicated is the situation when, as here, the price paid to the producer and by the consumer fluctuates from day to day on competitive markets influenced by complex and manifold economic factors. However, whatever the merits of the theory *qua* theory, there can be no question that in order to make *factual proof* as to whether a processing tax has been "passed on" it must be shown that the price to the vendee has been increased *because* of the tax, or that the price paid to the producer has been reduced *because* of the tax. When a commodity, such as rice, is bought and sold on competitive markets such proof can be made only by proving what the market *would have been* had there been no tax. This Court held in *International Harvester Company v. Kentucky* (1914), 234 U. S. 216, 223, that the determination of what the market price of a given article would have been under different cir-

cumstances "is a problem that no human ingenuity could solve," and that:

> "The reason is not the general uncertainties of a jury trial but that the elements necessary to determine the imaginary ideal are uncertain both in nature and degree of effect to the acutest commercial mind. The very community, the intensity of whose wish relatively to its other competing desires determines the price that it would give, has to be supposed differently organized and subject to other influences than those under which it acts. * * *
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> " * * * To compel them to guess on peril of indictment what the community would have given for them if the continually changing conditions were other than they are, to an uncertain extent; to divine prophetically what the reaction of only partially determinate facts would be upon the imaginations and desires of purchasers, is to exact gifts that mankind does not possess."

The situation involved in this case is many times more complex than that in the case just referred to. The manner in which the rice milling business is conducted is too complicated to set out in the confines of this brief but is fully set out in the petition and affidavits in support thereof. (R. 16-21, 60-75.) Because of the manner in which the rice milling business is, and must be, conducted it is impossible for a miller to tell accurately whether he has made a profit or loss with respect to the purchase, milling, and sale of a given lot of rough rice. (R. 62.) He can make a book figure with regard to any such lot

of rice by the use of averages, estimates, and arbitraries but that is all. He can only tell, at the end of the season, whether he has made a gain or loss on the season's operations. (R. 62.) The processing tax is levied upon each lot of rice based upon its weight at the time it reaches the mill and in order to recover the tax paid on such rice, under the provisions of Sec. 21(d), the miller must prove that he did not "pass on" the tax with respect to that particular lot of rice. Since he cannot even determine whether he made a profit or a loss on the particular transaction, it is manifestly impossible for him to know, much less prove, whether he has passed the tax on. However, even if he were able to prove exactly the amount of profit he made on each transaction, he would still have proved nothing but that. For all that he, or anyone else, could know he might have been able to sell the particular lot of rice for exactly the same price even if there had been no tax and he might have been able to purchase it for exactly the same price had there been no tax. On the face of it such matters are incapable of proof or even a sound guess. The miller cannot control the market on which he buys nor that on which he sells but he is compelled to buy and sell on those markets if he is to stay in the rice milling business. This lack of control of the markets by the miller is illustrated by the fact that the present cost of rough rice, plus operatings costs, including tax, is more than the miller can reasonably expect to get out of the products processed from it on the present market

for clean rice and rice products. (R. 62.) Manifestly under such circumstances no one can know, much less prove, whether the ultimate burden of the tax has fallen on the producer, the miller, or the purchaser. An analogous situation arises where a trademark has been infringed and the question arises as to how much of the sales price received by the infringer is attributable to the use of the trademark and how much to the intrinsic value of the object sold. In *Hamilton Shoe Company v. Wolf Bros.* (1916), 240 U. S. 251, 260, this Court held that in such a case it would, in the very nature of things, be impossible to ascertain to what extent the infringer could have effected sales and at what prices except for the use of the trademark. The same principle is applicable here—it is inherently impossible, in the circumstances of this case, for petitioner, or any other rice miller, to ascertain or prove to what extent he could have "effected sales and at what prices" except for the existence of the processing tax.

More than a thousand suits to enjoin the collection of these taxes have been filed throughout the United States. Insofar as petitioner knows the government has never yet been able to suggest *how* the proof required by the statute can be made. The government has satisfied itself with the simple assertion that proof *can* be made and with citing the opinion of this Court in *United States v. Jefferson Electric Manufacturing Company* (1934), 291 U. S. 386, 402, where the Court said:

"If the taxpayer has borne the burden of the tax, he can readily show it." * * *

The tax involved in that case was a tax upon the *sale* of a definite determinable object and amounted to 5% of the price for which the object was sold. The tax was not upon the manufacture, or the manufacture *and* sale. *Indian Motor Cycle Company v. United States* (1931), 283 U. S. 570, 574. In determining whether the payer of the tax collected it from the vendee or paid it himself there were no such complications as here exist. Indeed it was not suggested by anyone that the required proof could not be made; only that the taxpayer should not have to make it because the tax involved in the suit had been paid prior to the passage of the Act and at a time when it would not have been necessary for the payer to make such proof to procure refund. (P. 401.) The present case came before the Circuit Court of Appeals on a *final judgment dismissing the bill* on motion of the respondent which admitted the allegation that the proof required by the Act was impossible of being made. Nevertheless, and in the face of this, the Circuit Court of Appeals held that petitioner had "a" remedy at law (nothing being said as to the *adequacy* of it). Petitioner asserts that on the face of the Act, considering the *kind* of tax involved, an impossible burden of proof is placed upon petitioner. Petitioner further asserts that even if this were not true the Courts below should have enjoined the collection of the tax until such time as the courts could make a finding upon the

fact question of whether, under the peculiar conditions of the rice milling industry, the proof could be made. Respondent has not denied the allegations of petitioner's bill in this respect and under the circumstances the Court should not have dismissed the bill but was under the plain duty of preserving the *status quo* until such time as the facts upon which petitioner's constitutional rights depended could be fully determined. *cf Ohio Oil Company v. Conway* (1929), 279 U. S. 813.

Besides the lack of any adequate remedy at law this case presents several other grounds for equitable relief which have been held sufficient by this Court for the enjoining of the collection of a tax:

1. Multiplicity of suits (R. 23). *Wilson v. Illinois Southern Railroad* (1924), 263 U. S. 574; *Raymond v. Chicago Union Traction Company* (1907), 207 U. S. 20.

2. Congress has made no appropriation to repay any of these taxes if illegally collected, even if an adequate remedy at law were available, and in view of the tremendous amount involved it is improbable that any such appropriation will be made. (R. 24.) *Stewart Dry Goods Company v. Lewis* (1932), 287 U. S. 9.

3. The statute purporting to give the legal remedy has never been interpreted by the Courts and for this reason, if no other, petitioner's remedy at law cannot be said to be adequate. *Atlantic Coast Line v. Daughton* (1923), 262 U. S. 413. *cf Union Pacific Railroad v. Weld County* (1917), 247 U. S. 282.

4. The existence of the heavy civil and criminal penalties provided by Section 19(b) of the

Act*. (R. 15.) *Ex Parte Young* (1908), 209 U. S. 123, 146; *Wallace v. Hines* (1920), 253 U. S. 66.

Point C

Unconstitutionality of R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act Under the Circumstances of This Case.

The argument is made that the District Courts and Circuit Courts of Appeals, not being constitutional courts, may be completely abolished by Congress and therefore Congress may place any desired restriction on their jurisdiction. The answer to this is that Congress has not abolished the District Courts nor the Circuit Courts of Appeals and not having abolished them the Congress may not constitutionally deprive one class of citizens of the right to equitable relief therein while at the same time and under similar circumstances other taxpayers are permitted to obtain such relief. Persons other than those subject to the processing tax from whom illegal taxes are sought to be collected may enjoin their collection under special and extraordinary circumstances. *Hill v. Wallace, supra; Miller v. Standard Nut Margarine Company, supra.* The right to protect one's property by invoking the aid of courts is as much a property right as the property itself, and to deny one class of citizens this right while granting it to others under similar circumstances

*The applicable penalty provisions are copied in Appendix C hereto.

is to deprive the class so denied of its property without due process of law. In *Truax v. Corrigan* (1921), 257 U. S. 312, which involved an Arizona statute which forbade the issuance of injunctions to protect property rights in cases of labor disputes the contention was made in support of the validity of the statute that the State could have completely abolished the lower courts and therefore the State could put such limitations as it desired upon their jurisdiction. This court nevertheless held the statute violative of the Fourteenth Amendment. Since the validity of exertions by the Federal Government of any of its delegated powers under the Fifth Amendment are to be measured by the same standards by which exertions of State power are measured under the Fourteenth Amendment, *Hamilton v. Kentucky Distilleries Co.* (1919), 251 U. S. 146, 156, it would seem clear that R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act are unconstitutional if they be construed as depriving courts of jurisdiction to issue injunctions to protect property rights in tax cases where the taxpayer is without remedy, or at least adequate remedy, at law.

In *Brinkerhoff-Faris Trust & Savings Company v. Hill* (1930), 281 U. S. 673, the Supreme Court of Missouri held that the trial court properly dismissed a bill seeking to enjoin the illegal assessment and collection of taxes on the ground that the taxpayer should first have pursued remedies before the State Board of Equalization. That court had

previously held that the State Board of Equalization was without jurisdiction to hear such complaints. The effect of the second decision was to deprive the petitioner of all right to test the validity of the tax. This court held that this amounted to a deprivation of petitioner's property without due process of law, Mr. Justice Brandeis saying:

> "Whether acting through its judiciary or through its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it."

This language is exactly applicable to the instant case and seems conclusive that if R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act be construed as forbidding injunctive relief in this case they are unconstitutional. See also *Graham & Foster v. Goodcell* (1931), 282 U. S. 409, 430, 431.

However absolute the power of Congress to destroy the jurisdiction of the inferior Federal Courts may seem, it is no more absolute than the apparent power of the State to arbitrarily exclude a foreign corporation from doing business within its borders. Nevertheless, this court has held, *Fidelity & Deposit Company v. Tafoya* (1926), 270 U. S. 426, that this "most absolute seeming" right was qualified and in some circumstances could become wrong, and that despite this apparently unqualified right the State could not impose an unconstitutional condition upon the foreign corporation coming into the

State. The exercise of Congress's right to limit the equity jurisdiction of the lower Federal Courts in the granting of injunctions in tax cases such as the present would be, as in the case just cited, for the purpose of securing a result forbidden by the Fifth Amendment, i. e., the deprivation of petitioner's property without due process of law, and may not stand.

There is still another reason why these statutes, if construed to absolutely and in all cases forbid injunctions, are unconstitutional. The Constitution, Article III, Section 1, vests the judicial power of the United States in one Supreme Court and such inferior courts as the Congress may from time to time ordain and establish. By Section 2 of Article III this judicial power extends to all cases in law and *equity* arising under the Constitution and laws of of the United States. Congress having established the District Courts and the Circuit Courts of Appeals, they, by virtue of the Constitution, at once become vested with judicial power in all cases arising under the Constitution and laws of the United States. These inferior courts derive their *judicial power* from the Constitution and not from any act of Congress. Congress may well have the power to regulate the procedure in these courts and to define their jurisdiction but Congress may not, it is submitted, deprive the courts of their *inherent judicial powers* which naturally follow from the Constitutional grant of those powers. This was expressly held in *Michaelson v. United States*

(1924), 266 U. S. 42, 64, 65, 66, where the court said:

> *"If the statute now under review encroaches upon the equity jurisdiction intended by the Constitution, a grave constitutional question in respect of its validity would be presented;* and it, therefore, becomes our duty, as this Court has frequently said, to construe it 'if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score.' Panama R. R. Co. v. Johnson, 264 U. S. 375.
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> * * *
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> "But it is contended that the statute materially interferes with the inherent power of the courts and is therefore invalid. That the power to punish for contempts is inherent in all courts, has been many times decided and may be regarded as settled law. It is essential to the administration of justice. *The courts of the United States, when called into existence and vested with jurisdiction over any subject, at once become possessed of the power.* So far as the inferior Federal Courts are concerned, however, it is not beyond the authority of Congress (*Ex parte* Robinson, 19 Wall. 505, 510-511; [illegible] v. W. B. Conkey Co., 194 U. S. 324, 326); *but the attributes which inhere in that power and are inseparable from it can neither be abrogated nor rendered practically inoperative.* That it may be regulated within limits not precisely defined may not be doubted. The statute now under review is of the latter character."

The power of courts of equity to issue injunctions to protect property rights, which could not otherwise be protected, is quite as inherent as the power

to punish for contempt. Conceding the authority of Congress to regulate or limit the use of the power, to an undefined extent, the case here presents no such situation, for to interpret the acts as depriving the courts of the power to issue injunctions in *every case* involving the collection of the tax, would be to completely destroy one of the inherent powers of the court which it possesses by virtue of Section 2 of Article III of the Constitution. For these reasons petitioner submits that R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act, so construed, are unconstitutional.

Point D

Unconstitutionality of Summary Proceedings for Collection of the Tax.

Under Sections 115 to 131, Title 26, U. S. C., as amended,* which are incorporated into the present Act, the Commissioner is authorized to collect the taxes, upon non-payment, by the fixing of liens on all of petitioner's property or by the levying of distraints against petitioner's property, including bank accounts, etc. The procedure is summary and under the distraint proceedings it would be entirely possible for the Commissioner to collect the full tax alleged to be owed by petitioner before petitioner could even know any proceedings had been started to collect the tax. All that would be necessary would be for the Commissioner or a deputy to walk

*Printed in Appendix B.

to petitioner's bank with the proper papers and distrain petitioner's money there deposited. The constitutionality of this summary procedure was upheld in *Phillips v. Commissioner* (1931), 283 U. S. 589, 596, upon the express ground that under existing statutes the taxpayer was given ample opportunity to ultimately test the liability for the tax in a court of law, the court saying:

> "Where only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, *if the opportunity given for the ultimate judicial determination of the liability is adequate.* Springer v. United States, 102 U. S. 586, 593; Scottish Union & National Ins. Co. v. Bowland, 196 U. S. 611, 631."

Under the facts of this case plaintiff is deprived of all legal remedy to recover the tax collected, if it be held illegal, because of the impossible burden of proof petitioner would have to meet in such a suit and, if R. S. §3224 and Sec. 21(a) be so construed, petitioner is deprived of the right to test the validity of the tax by a suit for an injunction. To permit the government to summarily seize petitioner's property under these circumstances would be to deprive petitioner of his property without due process of law and to argue this further would be to argue the obvious. See, in addition to the case cited, *Lipke v. Lederer* (1922), 259 U. S. 557, 562; *Carpenter v. Shaw* (1930), 280 U. S. 363, 369; *Ward v. Love County* (1920), 253 U. S. 17.

Point E

The Agricultural Adjustment Act, as Amended, Is Unconstitutional.

Petitioner asserts that the Agricultural Adjustment Act, as amended, is unconstitutional for the following reasons:

1. The Act, though in form a revenue measure, is in fact an attempt to regulate the price at which petitioner buys and sells rice in intrastate commerce.

2. The Act is an attempt to control the production of agricultural commodities within the several States.

3. The taxes are not levied for the general welfare or for a public purpose.

4. The Act, as amended, contains an unconstitutional delegation of legislative power to the Secretary of Agriculture.

Section 2(1) of the Act declares the policy of the Act to be "to establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. * * *" The rice miller is still compelled to pay the market price for all rice bought from farmers, and in addition thereto he is compelled to pay $1.62 per barrel

on the rice so purchased, which $1.62 in turn is given to the farmer under the guise of benefit payments. The object is to raise the price to the farmer and that object is obtained in part, at least, by compelling petitioner to pay at least $1.62 per barrel more for his rice than he would otherwise have to pay. Since the purchase is wholly within intrastate commerce, it is unquestionably beyond the power of the Federal Government to control. *Hill v. Wallace* (1922), 259 U. S. 44; *Schechter Poultry Corporation v. United States* (1935), 295 U. S. 495; *Butler v. United States of America* (C. C. A., First, 1935), 78 Fed. (2nd) 1. Congress being without power by direct regulation to fix or control these prices, it cannot achieve the same result by casting a law having that purpose into the form of a revenue measure. *Child Labor Tax Case* (1922), 259 U. S. 20; *Hill v. Wallace, supra; Hammer v. Dagenhart* (1918), 247 U. S. 251.

Secondly, the Act attempts to control and reduce the production of agricultural commodities by farmers within the several States. In Section 8(1) the Secretary of Agriculture is authorized

> "to provide for reduction in the acreage or reduction in the production for market, or both, of any basic agricultural commodity, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith or upon that part of the production of any basic agricultural commodity required for domestic consumption, such amounts as the Secretary deems fair and reasonable." * * *

Of all industries, agriculture is the most essentially intrastate, and this has long been recognized by this Court. *Kidd v. Pearson* (1888), 128 U. S. 1, 21; *Heisler v. Thomas Colliery Company* (1922), 260 U. S. 245, 259; *Industrial Association v. United States* (1925), 268 U. S. 64, 82. Since the Act has for its purpose the regulation of this purely intrastate matter, *Schecter Poultry Corporation v. U. S., supra; Hill v. Wallace, supra,* the tax levied to effectuate this purpose must fall. *Child Labor Tax Case, supra; Railroad Retirement Board v. Alton Railroad Company* (1935), 295 U. S. 330; *Gibbons v. Ogden* (1824), 9 Wheat. 1, 199.

The fact that the arrangements between the Secretary of Agriculture and the individual farmers by which the latter reduce their acreage and the former makes benefit payments to them therefor out of the taxes collected from processors does not make the Act in purpose and effect any the less a regulation of agriculture within the State. *cf. Schecter Poultry Corporation v. U. S., supra,* p. 529. The arrangements are made by virtue of, and under authority of, the law, and it is idle to say that the act of the farmer in reducing his acreage pursuant to the contract with the Secretary of Agriculture is voluntary when the farmer knows that if he does not execute such agreement he is subjected to the penalty of having to sell his commodity at the same price at which other farmers sell it minus the substantial amount received by the other farmers by way of benefit payments. (R. 41.) Further-

more, without the tax provisions in the Act (which are certainly not voluntary) the enormous benefit funds with which to coerce the farmers into making the "voluntary" agreements would not be available and the result sought to be achieved by Congress, to wit, the regulation of agriculture within the several States, could not be accomplished.

Third, it seems plain that these taxes are not levied for the general welfare or a public purpose, as required by Article I, Section 8, Clause 1, of the Constitution. It is plain from the face of the Act that it is an attempt to redistribute purchasing power and the taxes provided by the Act are to be used solely for that purpose. Under Section 12(b) of the Act it is provided that "* * * for the purpose of effectuating the declared policy of this title, a sum equal to the proceeds derived from *all taxes* imposed under this title is hereby appropriated to be available to the Secretary of Agriculture * * *." That a tax cannot be levied on A for the purpose of paying a bounty to B was long ago held by this court in *Loan Association v. Topeka* (1874), 87 Wall. 655, 663, where Mr. Justice Miller said:

> "The power to tax is, therefore, the strongest, the most pervading of all the powers of the government, reaching directly or indirectly to all classes of the people. It was said by Chief Justice Marshall, in the case of McCullough v. The State of Maryland, that the power to tax is the power to destroy. A striking instance of the truth of the proposition is seen in the fact that the existing tax of ten per cent imposed by the United States on the circula-

> tion of all other banks than the National banks, drove out of existence every State bank of circulation within a year or two after its passage. This power can as readily be employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited wealth and prosperity to the other, if there is no implied limitation of the uses for which the power may be exercised."

It has been urged that the tax is constitutional because a favorable readjustment of the farmers' economic condition will ultimately redound to the general public good. The same sort of an argument was made to the court in *Loan Association v. Topeka, supra,* but the court rejected it, saying at page 665:

> "If it be said that a benefit results to the local public of a town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the innkeeper, the banker, the builder, the steamboat owner are equally promoters of the public good, and equally deserving the aid of the citizens by forced contributions."

While many assert that our economic difficulties are attributable to the condition of the farmer, there are still others who attribute it to the condition of the manufacturers or the condition of our export trade. If a tax can be levied to pay a bounty to farmers no reason is perceived why a tax may not be constitutionally levied to pay bounties to manu-

facturers or to those engaged in export trade or those engaged in any of our basic industries.

Finally, the processing tax provisions (Sec. 9),* even as altered by the amendment of August 24, 1935, violate Article I, Section 1, of the Constitution in making an unlawful delegation of legislative power to the Secretary of Agriculture. While the amendment provides for an initial processing tax on rice of 1c per pound (or $1.62 per barrel), nevertheless, under Sec. 9 the Secretary is given full power at any time to reduce, increase, modify or eliminate the tax, not by any practical standard, but largely by his opinion or prophecy of future prices and conditions. Where all such questions as to the duration of the tax and its increase or decrease or elimination are thus left to be resolved by the Secretary of Agriculture alone, it is clear that the Act still runs counter to Article I, Section 1, and is therefore unconstitutional. *Schechter Poultry Corporation, supra; Panama Refining Co. v. Ryan* (1934), 293 U. S. 388.

Point F

Certiorari Should Be Granted at the Present Time.

The opinion and order of the Circuit Court of Appeals, while interlocutory in form, in truth and in fact finally disposed of the case upon the merits. When it held that petitioner had a remedy at law and that the Courts below were without jurisdiction to grant the injunction prayed for (R. 98) the result

*Set out in Appendix D.

was a denial of all the relief sought by petitioner. Since the case will not come up for a hearing on its merits in the ordinary course of events until after the lapse of six or seven months the subject of the suit will be destroyed, the case become moot, and petitioner deprived of all right to have its case heard on the merits by any court unless this Court grants certiorari. If the order of the Circuit Court of Appeals is allowed to stand all the trial courts in the Circuit will feel bound thereby and will of necessity dismiss all bills filed in the Circuit for the purpose of testing the constitutionality of the taxes levied by the Agricultural Adjustment Act, as amended, with the result that not only your petitioner, but all other citizens living within the States of Texas, Louisiana, Mississippi, Alabama, Georgia and Florida be effectively deprived of any opportunity of testing the validity of this statute. There can be no question but that the constitutional questions raised in this case are grave and of national importance and this case involves an unprecedented situation. That the action of the Circuit Court of Appeals in denying the motion for an injunction to preserve the *status quo* pending appeal was wrong is plainly indicated by the fact that its action is contrary to the action of the Circuit Courts of Appeals for the Second, Sixth, Eighth, Ninth and Tenth Circuits, in granting injunctions in similar cases. It stands alone, unsupported by the decision of any other circuit. Its error can be corrected only by this Court now granting certiorari since there is

now before this Honorable Court a cause involving the constitutionality of the Agricultural Adjustment Act, which said cause is set for oral argument on December 9, 1935, and which will in the ordinary course of events be decided long prior to the time when this case would come up for hearing in the Circuit Court of Appeals. Without a writ of certiorari from this Honorable Court petitioner will have been compelled meanwhile to pay the taxes and if the Act be held unconstitutional its case would become moot and the taxes paid by it probably forever lost.

While the power to bring up a case pending in the Circuit Court of Appeals prior to final action in that Court is one to be sparingly exercised, the power nevertheless exists. *American Construction Company v. Jacksonville Railway* (1893), 148 U. S. 372. This Court said in *In Re Chetwood* (1897), 165 U. S. 443, 462:

> "And although, as observed in that case, this writ has not been issued as freely by this court as by the Court of Queen's Bench in England, and, prior to the Act of March 3, 1891, C. 517, 26 Stat. 826, had been ordinarily used as an auxiliary process merely, yet, whenever the circumstances imperatively demand that form of interposition the writ may be allowed, as at common law, to correct excesses of jurisdiction *and in furtherance of justice.*"

Likewise in *Harriman v. Northern Securities Company* (1905), 197 U. S. 244, 286, where the decree of the Circuit Court of Appeals actually dis-

posed of the entire case, although interlocutory in form, this Court granted certiorari. Other cases in which this Court has granted certiorari prior to a final decree in the Circuit Court of Appeals are *Denver v. New York Trust Company* (1913), 229 U. S. 123, 133; *Spiller v. Atchison, T. & S. F. Railway Company* (1920), 253 U. S. 117, 120; and *Dupont Powder Company v. Mastland* (1917), 244 U. S. 100. And in *The Three Friends* (1897), 166 U. S. 1, 49, this Court reviewed a decision of the District Court prior to action by the Circuit Court of Appeals on the appeal pending therein.

CONCLUSION

It is therefore respectfully submitted that this case is such as to call for the exercise by this Court of its supervisory powers. If the decisions of the District Court and the Circuit Court of Appeals stand, the result will be that petitioner will be deprived of its property without due process of law, and will be so deprived without any opportunity to test in the Courts the constitutional rights asserted in its bill of complaint. Unless this Honorable Court exercises such supervisory powers prior to the entry of a final decree in the Circuit Court of Appeals the subject matter of the suit will be destroyed, the suit become moot, and petitioner forever deprived of its constitutional rights. This Court should, therefore, review forthwith the decision of

the United States Circuit Court of Appeals for the Fifth Circuit and the decision of the District Court of the United States for the Eastern District of Louisiana.

Respectfully submitted,

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APPENDIX A

R. S. ART. 3224

No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

* * *

SECTION 21 OF AGRICULTURAL ADJUSTMENT ACT

SEC. 21 (*a*) No suit, action, or proceedings (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (*d*) of this section, may be reserved in the court's order.

(*b*) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regu-

lations of the Secretary with the approval of the President prior to the date of the adoption of this amendment, are hereby legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which have accrued and remain unpaid on the date of the adoption of this amendment shall be assessed and collected pursuant to Section 19, and to the provisions of law made applicable thereby. Nothing in this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary of Agriculture or of the President done or made prior to the date of the adoption of this amendment.

(*c*) The making of rental and benefit payments under this title, prior to the date of the adoption of this amendment, as determined, prescribed, proclaimed and made effective by the proclamations of the Secretary of Agriculture or of the President or by regulations of the Secretary, and the initiation, if formally approved by the Secretary of Agriculture prior to such date of adjustment programs under Section 8 (1) of this title, and the making of agreements with producers prior to such date, and the adoption of other voluntary methods prior to such date, by the Secretary of Agriculture under this title, and rental and benefit payments made pursuant thereto, are hereby legalized and ratified, and the making of all such agreements and payments, the initiation of such programs, and the adoption of all such methods prior to such date are hereby legalized, ratified, and confirmed as fully to all intents and purposes as if each such agreement, program, method, and payment had been specifically author-

ized and made effective and the rate and amount thereof fixed specifically by prior Act of Congress.

(*d*) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considerd by the court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (*a*) or (*c*) of Section 15, Section 16, or Section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of Section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by rea-

son of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be refunded or credited to any person (not a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (*a*) and (*b*) of Section 16, had the tax terminated by proclamation pursuant to the provisions of Section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish to the satisfaction of the Commissioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held

invalid a claim therefor (conforming to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2) no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, or jurisdiction of such courts based upon the amount in controversy.

(*e*) In connection with the establishment, by any claimant, of the facts required to be established in subsection (*d*) of this section, the Commissioner of Internal Revenue is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda, relative to any matter affecting the findings to be made by the Commissioner pursuant to subsection (*d*) of this section, to require the attendance of the claimant or of any officer or employee of the claimant, or the attendance of any other person having knowledge in the premises, and to take, or cause to be taken, his testimony with reference to any such matter, with power to administer oaths to such person or persons. It shall be lawful for the Commissioner, or any collector designated

by him, to summon witnesses on behalf of the United States or of any claimant to appear before the Commissioner, or before any person designated by him, at a time and place named in the summons, and to produce such books, papers, correspondence, memoranda, or other records as the Commissioner may deem relevant or material, and to give testimony or answer interrogatories, under oath, relating to any matter affecting the findings to be made by the Commissioner pursuant to subsection (*d*) of this section. The provisions of Revised Statutes 3174 and of Revised Statutes 3175 shall be applicable with respect to any summons issued pursuant to the provisions of this subsection. Any witness summoned under this subsection shall be paid, by the party on whose behalf such witness was summoned, the same fees and mileage as are paid witnesses in the courts of the United States. All information obtained by the Commissioner pursuant to this subsection shall be available to the Secretary of Agriculture upon written request therefor. Such information shall be kept confidential by all officers and employees of the Department of Agriculture, and any such officer or employee who violates this requirement shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both, and shall be removed from office.

(*f*) No refund, credit, or abatement shall be made or allowed of the amount of any tax, under Section 15, or Section 17, unless, within one year after the right to such refund, credit, or abatement has accrued, a claim for such refund, credit, or abatement (conforming to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled to such refund, credit, or abatement, except that if the right to any such refund, credit, or abatement accrued prior to the date of the adoption of this amendment, then

such one-year period shall be computed from the date of this amendment. No interest shall be allowed or paid, or included in any judgment, with respect to any such claim for refund or credit.

(*g*) The provisions of Section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax, or any refund or credit authorized by subsection (*a*) or (*c*) of Section 15, Section 16, or Section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of Section 317 of the Tariff Act of 1930.

APPENDIX B

Provisions of Title 26, U. S. C. Dealing With Collection of Taxes By Distraint

Sec. 115. *Lien for Taxes.* (*a*) If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. (Balance of Section deals with recording of lien and giving of releases.) (R. S. Sec. 3186; Mar. 1, 1879, C. 125, Sec. 3, 20 Stat. 331; Mar. 4, 1913, C. 166, 37 Stat. 1016; Feb. 26, 1925, C. 344, 43 Stat. 994; May 29, 1928, 8 a.m., C. 852, Title IV, Sec. 613, 45 Stat.)

116. *Distraint for Taxes.* If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with 5 per centum additional thereto, and interest as aforesaid, by distraint and sale, in the manner hereafter provided, of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid. (Balance of Section deals with exempt property.) (R. S. Sec. 3187; June 2, 1924, 4:01 p.m., C. 234, Sec. 1016, 43 Stat. 343.)

117. *Same; Levy.* In such case of neglect or refusal, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property

and rights to property, except such as are exempt by Section 116 of this title, belonging to such person, or on which the said lien exists, for the payment of the sum due as aforesaid, with interest and penalty for nonpayment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy. (R. S. Sec. 3188.)

118. *Same; Exhibit of Evidences Relating to Property.* All persons, and officers of companies or corporations, are required, on demand of a collector or deputy collector about to distrain or having distrained on any property, or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the tax due as aforesaid. (R. S. Sec. 3189.)

119. *Same; Proceedings On.* When distraint is made, as aforesaid, the officer charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the officer making such distraint, shall be left with the owner or possessor or such goods or effects, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded, and the time and place of sale; and the said officer shall forthwith cause a notification to be published in some newspaper within the county wherein said distraint is made, if a newspaper is published in said county, or to be publicly posted at the post office, if there be one within five miles nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Such notice shall specify the articles distrained, and the time and place for the sale thereof. Such time shall not be less than ten nor more than twenty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notice as herein

provided, and the place proposed for the sale shall not be more than five miles distant from the place of making such distraint. Said sale may be adjourned from time to time by said officer, if he deems it advisable, but not for a time to exceed in all thirty days. (R. S. Sec. 3190.)

120. *Same; Sale of Property Subject to Tax.* When property subject to tax, but upon which the tax has not been paid, is seized upon distraint and sold, the amount of such tax shall, after deducting the expenses of such sale, be first appropriated out of the proceeds thereof to the payment of the tax. And if no assessment of such tax has been made upon such property, the collector shall make a return thereof in the form required by law, and the Commissioner of Internal Revenue shall assess the tax thereon. (R. S. Sec. 3191.)

121. *Same; Sale of Property; Purchase for United States.* When any personal property is advertised for sale under distraint as aforesaid, the officer making the seizure shall proceed to sell such property at a public auction, offering the same at a minimum price, including the expenses of making the levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the officer conducting the sale may declare the same to be purchased by him for the United States. The property so purchased may be sold by the collector within whose district the sale was made under such regulations as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. The collector shall render to the Commissioner a distinct account of all charges incurred in such sales, and, in case of resale, shall pay into the Treasury the proceeds as provided in Section 3210 of the Revised Statutes, as amended (R. S. 3192, as amended May 10, 1934, 11:40 a.m., C. 277, Sec. 508, 48 Stat.)

122. *Same; Restoration of Property on Payment Before Sale.* (This merely provides for return of property distrained upon if tax is paid prior to sale.) (R. S. 3193.)

123. *Same; Effect of Certificate of Sale.* In all cases of sale, as aforesaid, the certificate of such sale shall be prima-facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale, and shall transfer to the purchaser all right, title, and interest of such delinquent in and to the property sold; and where such property consists of stocks, said certificate shall be notice, when received, to any corporation, company, or association of said transfer, and shall be authority to such corporation, company, or association to record the same on their books and records in the same manner as if transferred or assigned by the party holding the same, in lieu of any original or prior certificates, which shall be void, whether canceled or not. And said certificates, where the subject of sale is securities or other evidences of debt, shall be good and valid receipts to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt. (R. S. Sec. 3194.)

124. *Same; When Property Not Divisible.* (This deals with special case of indivisible property and allows sale of the whole even though its value exceeds amount of the tax. (R. S. Sec. 3195; June 2, 1924, 4:01 p.m., C. 234, Sec. 1031 (*a*), 43 Stat. 351; re-enacted Jan. 26, 1926, 10:25 a.m., C. 27, Title XI, Sec. 1128(a), 144 Stat. 124.)

125. *Real Estate; Sale to Satisfy Taxes.* When goods, chattels, or effects sufficient to satisfy the taxes imposed upon any person are not found by the collector or deputy collector, he is authorized to collect the same by seizure and sale of real estate. (R. S. Sec. 3196.)

126. *Same; Proceedings.* The officer making the seizure mentioned in Section 125 of this title shall give notice to the person whose estate it is proposed to sell by giving him in hand, or leaving at his last or usual place of abode, if he has any such within the collection district where said estate is situated, a notice, in writing, stating what particular estate is to be sold, describing the same with reasonable certainty, and the time when and place where said officer proposes to sell the same; which time shall not be less than twenty nor more than forty days from the time of giving said notice. The said officer shall also cause a notification to the same effect to be published in some newspaper within the county where such seizure is made, if any such there be, and shall also cause a like notice to be posted at the postoffice nearest to the estate seized, and in two other public places within the county; and the place of said sale shall not be more than five miles distant from the estate seized, except by special order of the Commissioner of Internal Revenue. At the time and place appointed, the officer making such seizure shall proceed to sell the said estate at public auction, offering the same at a minimum price, including the expense of making such levy, and all charges for advertising and an officer's fee of $10. (Balance of section deals with details of conducting sale.) (R. S. Sec. 3197; Feb. 27, 1877, C. 69, Sec. 1, 19 Stat. 248; Mar. 1, 1879, C. 125, Sec. 3, 20 Stat. 331; May 28, 1896, C. 252, 29 Stat. 179; Mar. 3, 1905, C. 1483, Sec. 1, 33 Stat. 1207; July 19, 1919, C. 24, Sec. 1, 41 Stat. 209.)

127. *Same; Certificate of Purchase; Deed.* (This provides for execution of deed by the collector to the purchaser.) (R. S. Sec. 3198.)

128. *Same; Deed Prima-Facie Evidence.* The deed of sale given in pursuance of Section 127 of this title shall be prima-facie evidence of the facts therein stated; and if the proceedings of the officer as set

forth have been substantially in accordance with the provisions of law, shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real estate thus sold at the time the lien of the United States attached thereto. (R. S. Sec. 3199.)

129. *Same; Place of Seizure (and Sale).* Any collector or deputy collector may, for the collection of taxes imposed upon any person, and committed to him for collection, seize and sell any of the property, real or personal (except property exempt from distraint and sale, under Section 3187 of the Revised Statutes, or any right or interest therein, of such person situated in any other collection district within the State in which such officer resides, notwithstanding the provisions of Section 3209 of the Revised Statutes; and his proceedings in relation thereto shall have the same effect as if the same were had in his proper collection district. (R. S. Sec. 3200; amended Jan. 26, 1926, 11:25 a.m., Title XI, Sec. 1129, 44 Stat. 125.)

130. *Same; Redemption Prior to Sale.* (This provides for return of property seized on payment of tax.) (R. S. Sec. 3201.)

131. *Same; Redemption After Sale.* (This provides for redemption after sale by payment to purchaser, within one year after the sale, of the purchase price with interest at 20% per annum.) (R. S. 3202.)

APPENDIX C

PENALTY PROVISIONS

SECTION 19(b) of the Agricultural Adjustment Act:

> "SEC 19. * * * (*b*) All provisions of law, including penalties, applicable with respect to the taxes imposed by Section 600 of the Revenue Act of 1926, and the provisions of Section 626 of the Revenue Act of 1932, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable in respect of taxes imposed by this title: * * * ."

SECTION 1114 of 1926 Revenue Act, applicable with respect to taxes imposed by Section 600 of that Act:

> "SEC. 1114. (*a*) Any person required under this Act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act, who wilfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisioned for not more than one year, or both, together with the costs of prosecution.
>
> "(*b*) Any person required under this Act to collect, account for and pay over any tax imposed by this Act, who willfully fails to collect or truthfully account for and pay over such tax,

and any person who willfully attempts in any manner to evade or defeat any tax imposed by this Act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

"(*c*) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal-revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

"(*d*) Any person who willfully fails to pay, collect, or truthfully account for and pay over, any tax imposed by Titles IV, V, VI, VII, VIII, and IX, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of Section 3176 of the Revised Statutes, as amended, or for any offense for which a penalty has been recovered under Section 3256 of the Revised Statutes.

"(*e*) Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

"(*f*) The term 'person' as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs."

APPENDIX D

Processing Tax Provisions of Agricultural Adjustment Act, as Amended, as Applied to Rice

Sec. 9. (*a*) To obtain revenue for extraordinary expenses incurred by reason of the national economic emergency, there shall be levied processing taxes as hereinafter provided. When the Secretary of Agriculture determines that any one or more payments authorized to be made under Section 8 are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation; except that * * * (2) in the case of rice, the Secretary of Agriculture shall, before April 1, 1935, proclaim that rental or benefit payments are to be made with respect thereto, and the processing tax shall be in effect on and after April 1, 1935. * * * In the case of rice, the period from August 1 to July 31, both inclusive, shall be considered to be the marketing year. The processing tax shall be levied, assessed, and collected upon the first domestic processing of the commodity, whether of domestic production or imported, and shall be paid by the processor. The rate of tax shall conform to the requirements of subsection (*b*). Such rate shall be determined by the Secretary of Agriculture as of the date the tax first takes effect, and the rate so determined shall, at such intervals as the Secretary finds necessary to effectuate the declared policy, be adjusted by him to conform to such requirements. The processing tax shall terminate at the end of the marketing year current at the time the Secretary proclaims that all payments authorized under Section 8 which are in effect are to be discontinued with

respect to such commodity. The marketing year for each commodity shall be ascertained and prescribed by regulations of the Secretary of Agriculture: * * *

(*b*) (1). The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, plus such percentage of such difference, not to exceed 20 per centum, as the Secretary of Agriculture may determine will result in the collection, in any marketing year with respect to which such rate of tax may be in effect pursuant to the provisions of this title, of an amount of tax equal to (A) the amount of credits or refunds which he estimates will be allowed or made during such period pursuant to section 15(c) with respect to the commodity (B) the amount of tax which he estimates would have been collected during such period upon all processing of such commodity which are exempt from tax by reason of the fact that such processings are done by or for a State, or a political subdivision or an institution thereof, had such processings been subject to tax. If, prior to the time the tax takes effect, or at any time thereafter, the Secretary has reason to believe that the tax at such rate, or at the then existing rate, on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, will cause or is causing such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depression of the farm price of the commodity, then the Secretary shall cause an appropriate investigation to be made, and afford due notice and opportunity for hearing to interested parties. If thereupon the Secretary determines and proclaims that any such result will oc-

cur or is occurring, then the processing tax on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be at such lower rate or rates as he determines and proclaims will prevent such accumulation of surplus stocks and depression of the farm price of the commodity, and the tax shall remain during its effective period at such lower rate until the Secretary, after due notice and opportunity for hearing to interested parties, determines and proclaims that an increase in the rate of such tax will not cause such accumulation of surplus stocks or depression of the farm price of the commodity. Thereafter the processing tax shall be at the highest rate which the Secretary determines will not cause such accumulation of surplus stocks or depression of the farm price of the commodity, but it shall not be higher than the rate provided in the first sentence of this paragraph. * * *

SPECIFIC TAX RATE—RICE

(3) For the period from April 1, 1935, to July 31, 1936, both inclusive, the processing tax with respect to rice shall be levied, assessed, collected, and paid at the rate of 1 cent per pound of rough rice. * * *

(6) (A) Any rate of tax which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6) on the processing of any commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be decreased (including a decrease to zero) in accordance with the formulae, standards, and requirements of paragraph (1) of

this subsection, in order to prevent such reduction in the quantity of such commodity or the products thereof domestically consumed as will result in the accumulation of surplus stocks of such commodity or the products thereof or in the depression of the farm price of the commodity, and shall thereafter be increased in accordance with the provisions of paragraph (1) of this subsection but subject to the provisions of subdivision (B) of this paragraph (6).

(B) If the average farm price of any commodity, the rate of tax on the processing of which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or is established pursuant to this paragraph (6), during any period of twelve successive months ending after July 1, 1935, consisting of the first ten months of any marketing year and the last two months of the preceding marketing year—

(*i*) is equal to, or exceeds by 10 per centum or less, the fair exchange value thereof, or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 20 per centum of the fair exchange value thereof.

(*ii*) exceeds by more than 10 per centum, but not more than 20 per centum, the fair exchange value thereof, the rate of such tax shall subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 15 per centum of the fair exchange value thereof.

(*iii*) exceeds by more than 20 per centum the fair exchange value thereof, the rate of such

tax shall (subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 10 per centum of the fair exchange value thereof.

(C) Any rate of tax which has been adjusted pursuant to this paragraph (6) shall remain at such adjusted rate unless further adjusted or terminated pursuant to this paragraph (6), until December 31, 1937, or until July 31, 1936, in the case of rice.

(D) In accordance with the formulae, standards, and requirements prescribed in this title, any rate of tax prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6) shall be increased.

(E) Any tax, the rate of which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6), shall terminate pursuant to proclamation as provided in section 9 (a) of this title or pursuant to section 13 of this title. Any such tax with respect to any basic commodity which terminates pursuant to proclamation as provided in section 9 (a) of this title shall again become effective at the rate prescribed in paragraph (2), (3), (4) or (5) of this subsection, subject however, to the provisions of subdivisions (A) and (B) of this paragraph (6), from the beginning of the marketing year for such commodity next following the date of a new proclamation by the Secretary as provided in section 9 (a) of this title, if such marketing year begins prior to December 31, 1937, or prior to July 31, 1936, in the case of rice, and shall remain at such rate until altered or terminated pursuant to the provisions of section 9 or terminated pursuant to section 13 of this title. * * *

(G) If the applicability to any person or circumstances of any tax, the rate of which is fixed in pursuance of this paragraph (6), is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be levied, assessed, collected, and paid (in lieu of all rates of tax fixed in pursuance of this paragraph (6) with respect to all tax liabilities incurred under this title on or after the effective date of each of the rates of tax fixed in pursuance of this paragraph (6)), rates of tax fixed under paragraph (2), (3), (4) or (5), and such rates shall be in effect (unless the particular tax is terminated pursuant to proclamation, as provided in section 9 (a) or pursuant to section (13) until altered by Act of Congress; except that, for any period prior to the effective date of such holding of invalidity, the amount of tax which represents the difference between the tax at the rate fixed in pursuance of this paragraph (6) and the tax at the rate fixed under paragraphs (2), (3), (4) and (5) shall not be levied, assessed, collected, or paid.

RICE—SPECIAL RULE

(7) In the case of rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to a processor, except that, where the producer processes his own rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to the place of processing. * * *

(*c*) For the purposes of part 2 of this title, the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period

specified in section 2; and, in the case of all commodities where the base period is the pre-war period, August 1909 to July 1914, will also reflect interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during said base period; and the current average farm price and the fair exchange value shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture. The rate of tax upon the processing of any commodity, in effect on the date on which this amendment is adopted, shall not be affected by the adoption of this amendment and shall not be required to be adjusted or altered, unless the Secretary of Agriculture finds that it is necessary to adjust or alter any such rate pursuant to section 9 (a) of this title.

(*d*) As used in part 2 of this title— * * *

(7) In the case of rice—

(A) The term "rough rice" means rice in that condition which is usual and customary when delivered by the producer to a processor.

(B) The term "processing" means the cleaning, shelling, milling (including custom milling for toll as well as commercial milling), grinding, rolling, or other processing (except grinding or cracking by or for the producer thereof for feed for his own livestock, cleaning by or directly for a producer for seed purposes, and drying) of rough rice; and in the case of rough rice with respect to which a tax-payment warrant has been previously issued or applied for by application then pending, the term "processing" means any one of the above mentioned processings or any preparation or handling in connection with the sale or other disposition thereof.

(C) The term "co-operating producer" means

any person (including any share-tenant or share-cropper) whom the Secretary of Agriculture finds to be willing to participate in the 1935 production-adjustment program for rice.

(D) The term "processor," as used in subsection (b-1) of section 15 of this title, means any person (including a co-operative association of producers) engaged in the processing of rice on a commercial basis (including custom milling for toll as well as commercial milling).

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Supreme Court of the United States

OCTOBER TERM, 1935

No. 530

BATON ROUGE RICE MILL, INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND SUPPORTING BRIEF THEREON.

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JOHN P. BULLINGTON,
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Houston, Texas.

BAKER, BOTTS, ANDREWS & WHARTON,
Of Counsel.
Houston, Texas.

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R. S. §3224 ..... 17, 18, 19, 20, 21, 31, 37
United States Code, Title 26, Secs. 115-131 ..... 18, 19, 36
United States Code, Title 28, Sec. 347 16

No.....

IN THE

Supreme Court of the United States

BATON ROUGE RICE MILL, INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

PETITION OF BATON ROUGE RICE MILL, INC., FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

MAY IT PLEASE THE COURT:

The petitioner, Baton Rouge Rice Mill, Inc., respectfully prays for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, to hear this cause prior to its decision by the Circuit Court of Appeals and to review the decision of the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, entered in this cause on October 28, 1935, and further to review the decision of the Circuit Court of Appeals in denying

the application of petitioner for a preliminary injunction pending the appeal of said cause in said Circuit Court of Appeals. Petitioner respectfully shows this Honorable Court:

1.

Questions Presented.

(*a*) Is the so-called Agricultural Adjustment Act, as amended on August 24, 1935, constitutional?

(*b*) Does Section 21(d) of said Act deprive petitioner of an adequate remedy at law?

(*c*) Does Article 3224 R. S. or Section 21(a) of said Act forbid the granting of an injunction when petitioner has no adequate remedy at law?

(*d*) If Section 21(a) of said Act forbids an injunction in a case where petitioner has no adequate remedy at law, is said Section 21(a) constitutional?

(*e*) If Congress may constitutionally deprive the Courts of jurisdiction to enjoin the collection of illegal taxes and at the same time deprive the taxpayer of any legal remedy to recover such illegal taxes, may the summary proceedings provided in Sections 115 to 131, Title 26, U. S. C., as amended, be constitutionally employed for the collection of such illegal taxes?

2.

Summary Statement of the Matter Involved.

Petitioner owns and operates a rice mill at Baton Rouge, Louisiana. Under the Act of the 73rd

Congress, P. L. No. 10, approved on May 12, 1933, as amended, known as the Agricultural Adjustment Act, there is imposed a processing tax of 1c per pound upon the first processing or milling of rough rice. The amount of tax shown to be due by petitioner in its return filed for the month of September, 1935, was $51,259.14. This tax was due and payable to respondent on October 30, 1935. October 28, 1935, petitioner filed its bill in the District Court to restrain the collection of this tax and any tax which might become due in subsequent months on the ground that said tax was unconstitutional, that petitioner was without adequate remedy at law, and that without such injunction it would be irreparably damaged. (R. 2.) Respondent filed a motion to dismiss on the ground that the Court had been deprived of jurisdiction by Art. 3224, U. S. R. S., and Section 21(a) of the Agricultural Adjustment Act. (R. 54.) Seven similar suits were consolidated with this by Court order (R. 58) and the Court heard at the same time petitioner's motion for a preliminary injunction and respondent's motion to dismiss for want of jurisdiction. At the hearing petitioner introduced two affidavits in support of its allegation that, due to the peculiar nature of the rice business, it was impossible to accurately determine the profit or loss resulting from the processing and sale of any given lot of rice. (R. 60, 65.) The affidavits further showed that it is impossible to prove what part, if any, of the processing tax is passed forward to the consumer or back to the producer or what part is borne by the miller. Respondent intro-

duced the joint affidavit of three deputy Internal Revenue Collectors which affidavit was inconsistent with the affidavits of petitioner in only one respect. (R. 75.) At the conclusion of the hearing the Court denied petitioner's motion for a preliminary injunction and granted respondent's motion to dismiss upon the ground that the Court was deprived of jurisdiction by Article 3224, U. S. R. S., and Section 21(a) of said Act. (R. 79.) Said Article 3224* and Section 21(a)* forbid the granting of an injunction to restrain the collection of any tax, and of the processing tax here involved, respectively. Under Section 21(d)* of said Agricultural Adjustment Act it is provided that no tax collected under the Act may be recovered except upon proof satisfactory to the Commissioner of Internal Revenue that the payer of the tax had not, directly or indirectly, included such amount in the price of the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee of the commodity, and that the price paid by the taxpayer for the unprocessed commodity was not reduced by any part of such amount. The bill below, and supporting affidavits, show the manner in which rough rice is milled and the manner in which it is sold, and that from any given lot of rough rice many different grades and qualities of clean rice are produced. The usual and customary method of selling rice is to sell it on samples made up of mixtures of different lots of clean rice which in turn are derived from differ-

*Set out in Appendix to Brief.

ent lots of rough rice purchased from different parties, and when an order for clean rice is received, based on any particular sample, the miller fills the order of clean rice from a mixture from various lots of clean rice. Many sales are made during a given season made up of various mixtures of clean rice, and there is practically an unlimited combination of lots of clean rice that go into the various sales. There is no way of accurately allocating to the various lots of rice going into any given mix any definite part of the price received for the entire mix. (R. 16-21.) Petitioner's sworn bill and affidavits showed that for these reasons it is impossible for petitioner or any other rice miller to make the proof required for recovery of the tax paid, if the law be held unconstitutional, even if it were otherwise possible to make such proof. Petitioner's sworn bill alleged that unless the injunction prayed for was granted: (1) It would be without adequate remedy at law to recover the taxes paid in the event they be held unconstitutional; (2) if any legal remedy existed, it would entail a multiplicity of suits; (3) it would become subject to heavy civil and criminal penalties and (4) it would suffer great and irreparable damages for specific reasons set out. (R. 15, 16, 23.) Respondent filed no answer denying any of these allegations. Petitioner alleged below that the said Section 21(d) did not apply to its suit because petitioner had no adequate remedy at law. It alleged further that, if said section be interpreted as prohibiting the injunction prayed for, the said

section, together with the other provisions of the Act, violated the Fifth Amendment to the Constitution in that said unconstitutional taxes would be collected from petitioner and petitioner would have no remedy by which it could recover said taxes, if they were unlawful, and thereby petitioner would be deprived of the right to test the constitutionality of the taxes. (R. 23.) Petitioner offered to give such security as the Court might require if the injunction were granted. (R. 24.) There was neither pleading nor proof that the granting of the injunction would in any wise injure respondent if the tax were ultimately held constitutional.

On October 29, 1935, petitioner was allowed an appeal. (R. 81.) On the same day petitioner applied for, and was denied, an injunction pending appeal. (R. 80.) The record was duly filed in the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, on November 4, 1935, being Cause No. 7947 on the docket of that Court. On November 4, 1935, petitioner applied to said Circuit Court of Appeals for an injunction against the respondent pending the hearing of its appeal (R. 87), but the Circuit Court of Appeals on November 5, 1935, denied the application. (R. 98.)

3.

Reasons Relied Upon for the Allowance of the Writ.

This case, with its companion cases, presents an entirely unprecedented situation. It presents questions of gravity and importance. It involves the

constitutionality of an important Federal statute and the rulings of the Court below, insofar as they may be taken to have held the statute constitutional, are probably in conflict with the decisions of this Court in *Loan Association v. Topeka* (1874), 20 Wall. 655; *Child Labor Tax Case* (1922), 259 U. S. 20; *Hill v. Wallace* (1922), 259 U. S. 44; *Hammer v. Dagenhart* (1918), 247 U. S. 251; and *Schechter Poultry Corporation v. United States* (1935), 295 U. S. 495; and contrary to the decision of the United States Circuit Court of Appeals for the Second Circuit in *Butler et al. v. United States* (1935), 78 Fed. (2nd) 1. The District Court and the Circuit Court of Appeals in holding that Congress may constitutionally forbid the granting of an injunction against summary collection of taxes, while at the same time depriving the taxpayer of any adequate remedy at law, presents a constitutional question of great importance never decided by this Court and a question which should be definitely decided. Though this question has never been *directly* decided by this Court, the decisions of the Courts below probably conflict with the decisions of this Honorable Court in *Truax v. Corrigan* (1921), 257 U. S. 312; *Brinkerhoff-Faris Trust & Savings Company v. Hill* (1930), 281 U. S. 673, and inferentially *Graham & Foster v. Goodcell* (1931), 282 U. S. 409, 430, 431; *Michaelson v. United States* (1924), 266 U. S. 42, 64, 65, 66, and *Phillips v. Commissioner* (1931), 283 U. S. 589, 596. This holding was particularly erroneous when the respondent was, at the same time,

authorized to collect the tax by summary proceedings under Sections 115 to 131, Title 26, U. S. C., as amended.

In holding that Article 3224, U. S. R. S., and Section 21(a) of said Act deprive the courts of jurisdiction to grant an injunction under the unusual and extraordinary circumstances of this case, the courts below decided an important question of Federal law in a way probably in conflict with the decisions of this Honorable Court in *Hill v. Wallace* (1922), 259 U. S. 44, and *Miller, Collector, v. Standard Nut Margarine Company* (1932), 284 U. S. 498, and in conflict with the unreported decisions of the Second, Sixth, Eighth, Ninth and Tenth Circuit Courts of Appeals, which granted injunctions pending appeal in cases similar to the present case.

The District Court, in refusing to grant petitioner's motion for a preliminary injunction, and in refusing to grant petitioner's motion for an injunction pending appeal, and the Circuit Court of Appeals in refusing to grant petitioner's motion for an injunction pending appeal, have so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Honorable Court's power of supervision and this action of the courts below is probably in conflict with the decision of this Honorable Court in *Ohio Oil Company v. Conway* (1929), 279 U. S. 813, and is in conflict with the holdings of every other Circuit Court of Appeals which has passed upon this question, to wit, the Circuit Courts of Appeals for the Second, Sixth, Eighth, Ninth and Tenth Circuits.

4.

Reasons Relied Upon for the Allowance of Writ Before Action on the Merits by the Circuit Court of Appeals.

This case, with its companion cases, presents a situation unparalleled in American history. Under the provisions of Sections 115 to 131, Title 26, U. S. C., as amended, the respondent is armed with weapons for the immediate forcible collection of the tax from petitioner, and those similarly situated, which they are powerless to resist. The District Court and Circuit Court of Appeals below have, contrary to the decisions of all other Circuit Courts of Appeals passing upon the question, held themselves deprived of any jurisdiction whatsoever to grant petitioner any relief. In the ordinary course of events it will be six or seven months before petitioner's appeal to the Circuit Court of Appeals will be heard on the merits. Meanwhile, through collection of the tax the subject-matter of the appeal may be destroyed, and the case become moot before a hearing may be had in the Circuit Court of Appeals. In addition, the order of the court below, though apparently an interlocutory order, has the effect of finally disposing of the appeal on the merits. The questions involved are of great national importance, and deserve the prompt consideration of this Honorable Court. This petition raises important questions of constitutional law not raised by any other petition now before this Court, and particularly it raises the question whether the provisions of Sections 115 to 131, Title 26, U. S. C., as

amended, are constitutional, if it be held that Congress may constitutionally deprive a taxpayer of all adequate remedy at law to recover taxes illegally collected while at the same time forbidding the granting of an injunction to restrain their collection. Hundreds of similar suits throughout the country involve this question, as well as the others herein raised, and the situation thus presented is so unusual and unprecedented as to justify this Honorable Court in requiring the record below to be certified to it forthwith for decision.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari may issue out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Fifth Circuit commanding said court to certify and send to this Court, on a day certain, to be therein designated, a full and complete Transcript of the Record and all of the proceedings in the Circuit Court of Appeals in said cause entitled Baton Rouge Rice Mill, Inc., Appellant, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Appellee, No. 7947 on its docket, to the end that said cause may be reviewed and determined by this Court as provided by Section 240 of the Judicial Code, as amended, and that your petitioner may have such other and further relief or remedy in the premises as this Court may deem appropriate and in conformity with said provisions of the Judicial Code, and that said judgment of the

District Court be reversed by this Honorable Court and such relief granted as is appropriate to the cause.

BATON ROUGE RICE MILL, INC.,

By HOMER L. BRUCE,

JOHN P. BULLINGTON,
Attorneys for Petitioner.

Of Counsel,
BAKER, BOTTS, ANDREWS & WHARTON,
Houston, Texas.

No.....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

BATON ROUGE RICE MILL, INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

The Opinions of the Courts Below.

The District Court wrote no opinion and the Circuit Court of Appeals has not yet rendered any decision on the merits of the appeal. The *per curiam* opinion of the Court denying the injunction pending appeal is found on page 98 of the record.

II.

Jurisdiction.

(1) Jurisdiction of this cause is conferred upon this Honorable Court by *Judicial Code, Section* 240, *as amended; United States Code, Title* 28, *Section* 347.

(2) The date of the judgment of the Trial Court to be reviewed is October 28, 1935 (R. 79), the date of the order of the Circuit Court of Appeals denying the injunction pending appeal sought to be reviewed is November 5, 1935. (R. 98.)

(3) The power of this Honorable Court to review the case prior to a disposition of it by the Circuit Court of Appeals and to review the action of the Circuit Court of Appeals in refusing to grant an interlocutory order to preserve the *status quo* is sustained by the following, among other, cases:

The Three Friends (1897), 166 U. S. 1, 49.
Denver v. New York Trust Company (1913), 229 U. S. 123, 133.
Harriman v. Northern Securities Company (1905), 197 U. S. 244, 286.
American Construction Company v. Jacksonville Railway (1893), 148 U. S. 372, 384.
Forsyth v. Hammon (1897), 166 U. S. 506, 513.
In re Chetwood (1897), 165 U. S. 443, 462.
McClellan v. Carland (1910), 217 U. S. 268, 277.
Hanover Star Milling Company v. Metcalf (1916), 240 U. S. 403, 408.
Gay v. Ruff (1934), 292 U. S. 25, 30.

III.

Statement of the Case.

A full statement of the case has been given under heading 2 in the petition and in the interest of brevity the statement is not repeated at this point.

IV.

Specification of Errors.

(1) The District Court erred in holding that it was without jurisdiction to hear petitioner's cause because of the provisions of R. S. Sec. 3224, and Sec. 21(a) of the Agricultural Adjustment Act, as amended.

(2) The District Court erred in refusing to grant petitioner a preliminary injunction pending a hearing on the merits.

(3) The District Court and Circuit Court of Appeals erred in holding that said Sec. 21(a) did not deprive petitioner of its property without due process of law contrary to the Fifth Amendment to the Constitution of the United States, in view of the allegations in the bill, admitted by the motion to dismiss, that petitioner was without remedy at law to recover the taxes paid if they were held to be illegal.

(4) The District Court and the Circuit Court of Appeals erred in holding that if said Sec. 21(a) forbade the granting of an injunction restraining the collection of the tax, and if petitioner had no remedy at law to recover the same, if it be held they were illegally collected, respondent could neverthe-

less employ the summary proceedings for immediate collection of the tax provided in Sections 115 to 131, Title 26, U. S. C., as amended, without depriving petitioner of its property without due process of law contrary to the Fifth Amendment to the Constitution of the United States.

(5) The District Court and the Circuit Court erred in holding that either or both R. S. §3224, and Sec. 21(a) of said Act prevented the granting of an injunction under the special and extraordinary circumstances presented by this case.

(6) The Circuit Court of Appeals erred in holding that petitioner had "a remedy at law to recover back any taxes illegally exacted."

(7) The Circuit Court of Appeals erred in refusing to grant petitioner an injunction to preserve the *status quo* pending its appeal from the order dismissing the bill.

(8) The Circuit Court of Appeals erred in refusing to grant petitioner an injunction pending the appeal for the purpose of preserving the appellate jurisdiction of that Court.

(9) The Circuit Court of Appeals erred in holding either or both R. S. §3224, and Sec. 21(a) of said Act "deprived the Court of jurisdiction to grant injunctive relief."

(10) The District Court and Circuit Court of Appeals erred in not holding the Agricultural Adjustment Act, as amended, to be violative of Art. 1, Sec. 1, Amendments Five and Ten of the Constitution of the United States.

Petitioner expects to rely on all of the foregoing specifications of error.

V.

ARGUMENT

Summary of the Argument.

Point A

Neither R. S. §3224, nor Sec. 21(a) of the Agricultural Adjustment Act, properly interpreted, bars injunctive relief in this case.

Point B

Sec. 21(d) of the Agricultural Adjustment Act deprives petitioner of any adequate remedy at law.

Point C

If R. S. §3224, and Sec. 21(a) of the Agricultural Adjustment Act forbid the granting of an injunction in this case, then they are unconstitutional.

Point D

The summary proceedings provided in Sections 115 to 131, Title 26, U. S. C., as amended, are unconstitutional when applied to a taxpayer who has been deprived of both legal and equitable remedies to test the constitutionality of the tax thus sought to be collected.

Point E

The Agricultural Adjustment Act, as amended, is unconstitutional.

Point F

This is a case where certiorari should be granted prior to the final decree by the Circuit Court of Appeals.

Point A

Inapplicability of R. S. §3224 and Section 21(a) of the Agricultural Adjustment Act.

In wording and in effect R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act, as amended, are for all practical purposes identical. For the convenience of the Court the two acts are here set out side by side:

R. S. §3224.	**A. A. A. Sec. 21(a).**
No suit	No suit, action or proceeding (including probate, administration, receivership, and bankruptcy proceedings)
shall be maintained in any court	shall be brought or maintained in any court
for the purpose of restraining the assessment or collection of any tax.	if such suit, action or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or

> collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment * * *.

This Court has consistently held that despite the apparently unconditional terms of R. S. §3224, injunctions against the collection of a tax may issue in proper cases. The latest expression of the Court on the point is found in *Miller v. Standard Nut Margarine Company* (1932), 284 U. S. 498, 509, where the Court said:

> "The section does not refer specifically to the rule applicable to cases involving exceptional circumstances. The general words employed are not sufficient, and it would require specific language undoubtedly disclosing that purpose, to warrant the inference that Congress intended to abrogate that salutary and well established rule. * * * It has never held the rule to be absolute, but has repeatedly indicated that extraordinary and exceptional circumstances render its provisions inapplicable. * * *
>
> " * * * It requires no elaboration of the facts found to show that the enforcement of the Act against respondent would be arbitrary and oppressive, would destroy its business, ruin it financially and inflict loss for which it would have no remedy at law. It is clear that, by reason of the special and extraordinary facts and circumstances, Sec. 3224 does not apply."

See also Hill v. Wallace (1922), 259 U. S. 44, 62; Dodge v. Osborn, (1916), 240 U. S. 118, 121.

Section 21(a) was included in the amendment to the Act of August 24, 1935, after numerous suits to restrain the collection of the tax had been filed throughout the country in which the contention was made that the supposed tax was in fact no tax at all but a penalty. *e.g., Penn v. Glenn,* 10 Fed. Supp. 483, 484 (April 13, 1935); F. G. Vogt & Sons, Inc. v. Rothensies, 11 Fed. Supp. 225, 230 (July 17, 1935); Armour & Company v. Harrison (not yet reported, District Court, Northern District of Illinois), in which the Court said in connection with R. S. §3224:

> "Merely to call this exaction a tax does not make it a tax. It is not levied for governmental purposes; therefore, it is not a tax. Therefore, the statute has no application to it."

The obvious purpose of Congress in including this section in the amendment was to make certain its intention that the principle of R. S. §3224 should apply to suits brought to restrain collection of these particular taxes. Having expressed its intention in words practically identical with those used in R. S. §3224, the amendment must be interpreted in the light of the well settled rule that, when a statute is reenacted in the same words as a previous statute which has received a judicial interpretation, the re-enacted statute includes the previous judicial interpretation. Louisville Cement Co. v. Interstate Commerce Commission (1918), 246 U. S. 638, 644.

Further it must be interpreted in the light of the

rule that a statute, susceptible of two constructions, should be construed in such a way as not to raise doubts as to its constitutionality. *Panama R. R. Co. v. Johnson* (1924), 264 U. S. 375; *Michaelson v. United States* (1924), 266 U. S. 42. As will be pointed out hereafter, to interpret this statute in the manner in which it has been interpreted below would raise grave doubts as to its constitutionality.

Interpreting these statutes as not forbidding injunctive relief in *all* cases we may pass to a discussion of whether extraordinary and exceptional circumstances exist in this case such as would render them inapplicable.

Point B

Section 21(d) of the Agricutural Adjustment Act Deprives Petitioner of Its Remedy at Law.

Section 21(d)* forbids the return of any taxes illegally collected under the Act unless the taxpayer proves, to the satisfaction of the Commissioner, that neither the taxpayer nor any person directly or indirectly under his control has, directly or indirectly, included the amount of the tax or any part thereof in the price of the commodity with respect to which it was imposed, or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner or included any part of such amount in the charge or fee

*Printed in the appendix.

for processing, and that the price paid by the taxpayer for the commodity was not reduced by any part of the tax paid. This, obviously, was an attempt to enact into law the economic theory that the burden of any tax imposed upon a manufacturer or processor is ultimately passed on to others. In speaking of a sales tax, Mr. Justice Stone and Mr. Justice Brandeis, dissenting in *Indian Motorcycle Company v. U. S.* (1931), 283 U. S. 570, 581, said:

> "In the Panhandle Oil Case, it was held that this shifting of the burden of a State tax from the seller to the buyer was sufficient to render the tax invalid where the buyer was an agency of the United States, and it was assumed that the burden of the sales tax involved was so inevitably passed on to the buyer as to require this result. With this assumption economists would not, I believe, generally agree. Many hold that whether the burden of any tax paid by the seller is actually passed on to the buyer depends upon considerations so various and complex as to preclude the assumption *a priori* that any particular tax at any particular time is passed on. In some conditions of the market, the burden remains with the seller, or even may be shifted back from the seller to the producer by the reduction of the producer's price, rather than forward to the consumer by an increase of the seller's price."

Likewise Mr. Justice Holmes speaking for the full Court in *Lash's Products Company v. U. S.* (1929), 278 U. S. 175, 176, said:

> "The phrase 'passed the tax on' is inaccurate, as obviously the tax is laid and remains on the

> manufacturer and on him alone. Heckman & Co. v. I. S. Dawes & Son Co., 12 F. (2d) 154. The purchaser does not pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all."

A sales tax is of course easily identifiable, or capable of identification, because levied on the sale of a given identifiable object and based upon the price at which the object is sold. If the question of whether such a tax has been "passed on" is so debatable, how much more so must be the case of a tax, such as a processing tax, which is carried as a part of the processor's expenses of operation? Even more complicated is the situation when, as here, the price paid to the producer and by the consumer fluctuates from day to day on competitive markets influenced by complex and manifold economic factors. However, whatever the merits of the theory *qua* theory, there can be no question that in order to make *factual proof* as to whether a processing tax has been "passed on" it must be shown that the price to the vendee has been increased *because* of the tax, or that the price paid to the producer has been reduced *because* of the tax. When a commodity, such as rice, is bought and sold on competitive markets such proof can be made only by proving what the market *would have been* had there been no tax. This Court held in *International Harvester Company v. Kentucky* (1914), 234 U. S. 216, 223, that the determination of what the market price of a given article would have been under different cir-

cumstances "is a problem that no human ingenuity could solve," and that:

> "The reason is not the general uncertainties of a jury trial but that the elements necessary to determine the imaginary ideal are uncertain both in nature and degree of effect to the acutest commercial mind. The very community, the intensity of whose wish relatively to its other competing desires determines the price that it would give, has to be supposed differently organized and subject to other influences than those under which it acts. * * *.
>
> " * * * To compel them to guess on peril of indictment what the community would have given for them if the continually changing conditions were other than they are, to an uncertain extent; to divine prophetically what the reaction of only partially determinate facts would be upon the imaginations and desires of purchasers, is to exact gifts that mankind does not possess."

The situation involved in this case is many times more complex than that in the case just referred to. The manner in which the rice milling business is conducted is too complicated to set out in the confines of this brief but is fully set out in the petition and affidavits in support thereof. (R. 16-21, 60-75.) Because of the manner in which the rice milling business is, and must be, conducted it is impossible for a miller to tell accurately whether he has made a profit or loss with respect to the purchase, milling, and sale of a given lot of rough rice. (R. 62.) He can make a book figure with regard to any such lot

of rice by the use of averages, estimates, and arbitraries but that is all. He can only tell, at the end of the season, whether he has made a gain or loss on the season's operations. (R. 62.) The processing tax is levied upon each lot of rice based upon its weight at the time it reaches the mill and in order to recover the tax paid on such rice, under the provisions of Sec. 21(d), the miller must prove that he did not "pass on" the tax with respect to that particular lot of rice. Since he cannot even determine whether he made a profit or a loss on the particular transaction, it is manifestly impossible for him to know, much less prove, whether he has passed the tax on. However, even if he were able to prove exactly the amount of profit he made on each transaction, he would still have proved nothing but that. For all that he, or anyone else, could know he might have been able to sell the particular lot of rice for exactly the same price even if there had been no tax and he might have been able to purchase it for exactly the same price had there been no tax. On the face of it such matters are incapable of proof or even a sound guess. The miller cannot control the market on which he buys nor that on which he sells but he is compelled to buy and sell on those markets if he is to stay in the rice milling business. This lack of control of the markets by the miller is illustrated by the fact that the present cost of rough rice, plus operatings costs, including tax, is more than the miller can reasonably expect to get out of the products processed from it on the present market

for clean rice and rice products. (R. 62.) Manifestly under such circumstances no one can know, much less prove, whether the ultimate burden of the tax has fallen on the producer, the miller, or the purchaser. An analogous situation arises where a trademark has been infringed and the question arises as to how much of the sales price received by the infringer is attributable to the use of the trademark and how much to the intrinsic value of the object sold. In *Hamilton Shoe Company v. Wolf Bros.* (1916), 240 U. S. 251, 260, this Court held that in such a case it would, in the very nature of things, be impossible to ascertain to what extent the infringer could have effected sales and at what prices except for the use of the trademark. The same principle is applicable here—it is inherently impossible, in the circumstances of this case, for petitioner, or any other rice miller, to ascertain or prove to what extent he could have "effected sales and at what prices" except for the existence of the processing tax.

More than a thousand suits to enjoin the collection of these taxes have been filed throughout the United States. Insofar as petitioner knows the government has never yet been able to suggest *how* the proof required by the statute can be made. The government has satisfied itself with the simple assertion that proof *can* be made and with citing the opinion of this Court in *United States v. Jefferson Electric Manufacturing Company* (1934), 291 U. S. 386, 402, where the Court said:

"If the taxpayer has borne the burden of the tax, he can readily show it." * * *

The tax involved in that case was a tax upon the *sale* of a definite determinable object and amounted to 5% of the price for which the object was sold. The tax was not upon the manufacture, or the manufacture *and* sale. *Indian Motor Cycle Company v. United States* (1931), 283 U. S. 570, 574. In determining whether the payer of the tax collected it from the vendee or paid it himself there were no such complications as here exist. Indeed it was not suggested by anyone that the required proof could not be made; only that the taxpayer should not have to make it because the tax involved in the suit had been paid prior to the passage of the Act and at a time when it would not have been necessary for the payer to make such proof to procure refund. (P. 401.) The present case came before the Circuit Court of Appeals on a *final judgment dismissing the bill* on motion of the respondent which admitted the allegation that the proof required by the Act was impossible of being made. Nevertheless, and in the face of this; the Circuit Court of Appeals held that petitioner had "a" remedy at law (nothing being said as to the *adequacy* of it). Petitioner asserts that on the face of the Act, considering the *kind* of tax involved, an impossible burden of proof is placed upon petitioner. Petitioner further asserts that even if this were not true the Courts below should have enjoined the collection of the tax until such time as the courts could make a finding upon the

fact question of whether, under the peculiar conditions of the rice milling industry, the proof could be made. Respondent has not denied the allegations of petitioner's bill in this respect and under the circumstances the Court should not have dismissed the bill but was under the plain duty of preserving the *status quo* until such time as the facts upon which petitioner's constitutional rights depended could be fully determined. *cf Ohio Oil Company v. Conway* (1929), 279 U. S. 813.

Besides the lack of any adequate remedy at law this case presents several other grounds for equitable relief which have been held sufficient by this Court for the enjoining of the collection of a tax:

1. Multiplicity of suits (R. 23). *Wilson v. Illinois Southern Railroad* (1924), 263 U. S. 574; *Raymond v. Chicago Union Traction Company* (1907), 207 U. S. 20.

2. Congress has made no appropriation to repay any of these taxes if illegally collected, even if an adequate remedy at law were available, and in view of the tremendous amount involved it is improbable that any such appropriation will be made. (R. 24.) *Stewart Dry Goods Company v. Lewis* (1932), 287 U. S. 9.

3. The statute purporting to give the legal remedy has never been interpreted by the Courts and for this reason, if no other, petitioner's remedy at law cannot be said to be adequate. *Atlantic Coast Line v. Daughton* (1923), 262 U. S. 413. *cf Union Pacific Railroad v. Weld County* (1917), 247 U. S. 282.

4. The existence of the heavy civil and criminal penalties provided by Section 19(b) of the

Act*. (R. 15.) *Ex Parte Young* (1908), 209 U. S. 123, 146; *Wallace v. Hines* (1920), 253 U. S. 66.

Point C

Unconstitutionality of R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act Under the Circumstances of This Case.

The argument is made that the District Courts and Circuit Courts of Appeals, not being constitutional courts, may be completely abolished by Congress and therefore Congress may place any desired restriction on their jurisdiction. The answer to this is that Congress has not abolished the District Courts nor the Circuit Courts of Appeals and not having abolished them the Congress may not constitutionally deprive one class of citizens of the right to equitable relief therein while at the same time and under similar circumstances other taxpayers are permitted to obtain such relief. Persons other than those subject to the processing tax from whom illegal taxes are sought to be collected may enjoin their collection under special and extraordinary circumstances. *Hill v. Wallace, supra; Miller v. Standard Nut Margarine Company, supra.* The right to protect one's property by invoking the aid of courts is as much a property right as the property itself, and to deny one class of citizens this right while granting it to others under similar circumstances

*The applicable penalty provisions are copied in Appendix C hereto.

is to deprive the class so denied of its property without due process of law. In *Truax v. Corrigan* (1921), 257 U. S. 312, which involved an Arizona statute which forbade the issuance of injunctions to protect property rights in cases of labor disputes the contention was made in support of the validity of the statute that the State could have completely abolished the lower courts and therefore the State could put such limitations as it desired upon their jurisdiction. This court nevertheless held the statute violative of the Fourteenth Amendment. Since the validity of exertions by the Federal Government of any of its delegated powers under the Fifth Amendment are to be measured by the same standards by which exertions of State power are measured under the Fourteenth Amendment, *Hamilton v. Kentucky Distilleries Co.* (1919), 251 U. S. 146, 156, it would seem clear that R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act are unconstitutional if they be construed as depriving courts of jurisdiction to issue injunctions to protect property rights in tax cases where the taxpayer is without remedy, or at least adequate remedy, at law.

In *Brinkerhoff-Faris Trust & Savings Company v. Hill* (1930), 281 U. S. 673, the Supreme Court of Missouri held that the trial court properly dismissed a bill seeking to enjoin the illegal assessment and collection of taxes on the ground that the taxpayer should first have pursued remedies before the State Board of Equalization. That court had

previously held that the State Board of Equalization was without jurisdiction to hear such complaints. The effect of the second decision was to deprive the petitioner of all right to test the validity of the tax. This court held that this amounted to a deprivation of petitioner's property without due process of law, Mr. Justice Brandeis saying:

> "Whether acting through its judiciary or through its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it."

This language is exactly applicable to the instant case and seems conclusive that if R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act be construed as forbidding injunctive relief in this case they are unconstitutional. See also *Graham & Foster v. Goodcell* (1931), 282 U. S. 409, 430, 431.

However absolute the power of Congress to destroy the jurisdiction of the inferior Federal Courts may seem, it is no more absolute than the apparent power of the State to arbitrarily exclude a foreign corporation from doing business within its borders. Nevertheless, this court has held, *Fidelity & Deposit Company v. Tafoya* (1926), 270 U. S. 426, that this "most absolute seeming" right was qualified and in some circumstances could become wrong, and that despite this apparently unqualified right the State could not impose an unconstitutional condition upon the foreign corporation coming into the

State. The exercise of Congress's right to limit the equity jurisdiction of the lower Federal Courts in the granting of injunctions in tax cases such as the present would be, as in the case just cited, for the purpose of securing a result forbidden by the Fifth Amendment, i. e., the deprivation of petitioner's property without due process of law, and may not stand.

There is still another reason why these statutes, if construed to absolutely and in all cases forbid injunctions, are unconstitutional. The Constitution, Article III, Section 1, vests the judicial power of the United States in one Supreme Court and such inferior courts as the Congress may from time to time ordain and establish. By Section 2 of Article III this judicial power extends to all cases in law and *equity* arising under the Constitution and laws of of the United States. Congress having established the District Courts and the Circuit Courts of Appeals, they, by virtue of the Constitution, at once become vested with judicial power in all cases arising under the Constitution and laws of the United States. These inferior courts derive their *judicial power* from the Constitution and not from any act of Congress. Congress may well have the power to regulate the procedure in these courts and to define their jurisdiction but Congress may not, it is submitted, deprive the courts of their *inherent judicial powers* which naturally follow from the Constitutional grant of those powers. This was expressly held in *Michaelson v. United States*

(1924), 266 U. S. 42, 64, 65, 66, where the court said:

> *"If the statute now under review encroaches upon the equity jurisdiction intended by the Constitution, a grave constitutional question in respect of its validity would be presented;* and it, therefore, becomes our duty, as this Court has frequently said, to construe it 'if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score.' Panama R. R. Co. v. Johnson, 264 U. S. 375.
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> * * *
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> "But it is contended that the statute materially interferes with the inherent power of the courts and is therefore invalid. That the power to punish for contempts is inherent in all courts, has been many times decided and may be regarded as settled law. It is essential to the administration of justice. *The courts of the United States, when called into existence and vested with jurisdiction over any subject, at once become possessed of the power.* So far as the inferior Federal Courts are concerned, however, it is not beyond the authority of Congress (*Ex parte* Robinson, 19 Wall. 505, 510-511; Bessette v. W. B. Conkey Co., 194 U. S. 324, 326); *but the attributes which inhere in that power and are inseparable from it can neither be abrogated nor rendered practically inoperative.* That it may be regulated within limits not precisely defined may not be doubted. The statute now under review is of the latter character."

The power of courts of equity to issue injunctions to protect property rights, which could not otherwise be protected, is quite as inherent as the power

to punish for contempt. Conceding the authority of Congress to regulate or limit the use of the power, to an undefined extent, the case here presents no such situation, for to interpret the acts as depriving the courts of the power to issue injunctions in *every case* involving the collection of the tax, would be to completely destroy one of the inherent powers of the court which it possesses by virtue of Section 2 of Article III of the Constitution. For these reasons petitioner submits that R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act, so construed, are unconstitutional.

Point D

Unconstitutionality of Summary Proceedings for Collection of the Tax.

Under Sections 115 to 131, Title 26, U. S. C., as amended,* which are incorporated into the present Act, the Commissioner is authorized to collect the taxes, upon non-payment, by the fixing of liens on all of petitioner's property or by the levying of distraints against petitioner's property, including bank accounts, etc. The procedure is summary and under the distraint proceedings it would be entirely possible for the Commissioner to collect the full tax alleged to be owed by petitioner before petitioner could even know any proceedings had been started to collect the tax. All that would be necessary would be for the Commissioner or a deputy to walk

*Printed in Appendix B.

to petitioner's bank with the proper papers and distrain petitioner's money there deposited. The constitutionality of this summary procedure was upheld in *Phillips v. Commissioner* (1931), 283 U. S. 589, 596, upon the express ground that under existing statutes the taxpayer was given ample opportunity to ultimately test the liability for the tax in a court of law, the court saying:

> "Where only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, *if the opportunity given for the ultimate judicial determination of the liability is adequate.* Springer v. United States, 102 U. S. 586, 593; Scottish Union & National Ins. Co. v. Bowland, 196 U. S. 611, 631."

Under the facts of this case plaintiff is deprived of all legal remedy to recover the tax collected, if it be held illegal, because of the impossible burden of proof petitioner would have to meet in such a suit and, if R. S. §3224 and Sec. 21(a) be so construed, petitioner is deprived of the right to test the validity of the tax by a suit for an injunction. To permit the government to summarily seize petitioner's property under these circumstances would be to deprive petitioner of his property without due process of law and to argue this further would be to argue the obvious. See, in addition to the case cited, *Lipke v. Lederer* (1922), 259 U. S. 557, 562; *Carpenter v. Shaw* (1930), 280 U. S. 363, 369; *Ward v. Love County* (1920), 253 U. S. 17.

Point E

The Agricultural Adjustment Act, as Amended, Is Unconstitutional.

Petitioner asserts that the Agricultural Adjustment Act, as amended, is unconstitutional for the following reasons:

1. The Act, though in form a revenue measure, is in fact an attempt to regulate the price at which petitioner buys and sells rice in intrastate commerce.

2. The Act is an attempt to control the production of agricultural commodities within the several States.

3. The taxes are not levied for the general welfare or for a public purpose.

4. The Act, as amended, contains an unconstitutional delegation of legislative power to the Secretary of Agriculture.

Section 2(1) of the Act declares the policy of the Act to be "to establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. * * *" The rice miller is still compelled to pay the market price for all rice bought from farmers, and in addition thereto he is compelled to pay $1.62 per barrel

on the rice so purchased, which $1.62 in turn is given to the farmer under the guise of benefit payments. The object is to raise the price to the farmer and that object is obtained in part, at least, by compelling petitioner to pay at least $1.62 per barrel more for his rice than he would otherwise have to pay. Since the purchase is wholly within intrastate commerce, it is unquestionably beyond the power of the Federal Government to control. *Hill v. Wallace* (1922), 259 U. S. 44; *Schechter Poultry Corporation v. United States* (1935), 295 U. S. 495; *Butler v. United States of America* (C. C. A., First, 1935), 78 Fed. (2nd) 1. Congress being without power by direct regulation to fix or control these prices, it cannot achieve the same result by casting a law having that purpose into the form of a revenue measure. *Child Labor Tax Case* (1922), 259 U. S. 20; *Hill v. Wallace, supra; Hammer v. Dagenhart* (1918), 247 U. S. 251.

Secondly, the Act attempts to control and reduce the production of agricultural commodities by farmers within the several States. In Section 8(1) the Secretary of Agriculture is authorized

> "to provide for reduction in the acreage or reduction in the production for market, or both, of any basic agricultural commodity, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith or upon that part of the production of any basic agricultural commodity required for domestic consumption, such amounts as the Secretary deems fair and reasonable." * * *

Of all industries, agriculture is the most essentially intrastate, and this has long been recognized by this Court. *Kidd v. Pearson* (1888), 128 U. S. 1, 21; *Heisler v. Thomas Colliery Company* (1922), 260 U. S. 245, 259; *Industrial Association v. United States* (1925), 268 U. S. 64, 82. Since the Act has for its purpose the regulation of this purely intrastate matter, *Schecter Poultry Corporation v. U. S., supra; Hill v. Wallace, supra,* the tax levied to effectuate this purpose must fall. *Child Labor Tax Case, supra; Railroad Retirement Board v. Alton Railroad Company* (1935), 295 U. S. 330; *Gibbons v. Ogden* (1824), 9 Wheat. 1, 199.

The fact that the arrangements between the Secretary of Agriculture and the individual farmers by which the latter reduce their acreage and the former makes benefit payments to them therefor out of the taxes collected from processors does not make the Act in purpose and effect any the less a regulation of agriculture within the State. *cf. Schecter Poultry Corporation v. U. S., supra,* p. 529. The arrangements are made by virtue of, and under authority of, the law, and it is idle to say that the act of the farmer in reducing his acreage pursuant to the contract with the Secretary of Agriculture is voluntary when the farmer knows that if he does not execute such agreement he is subjected to the penalty of having to sell his commodity at the same price at which other farmers sell it minus the substantial amount received by the other farmers by way of benefit payments. (R. 41.) Further-

more, without the tax provisions in the Act (which are certainly not voluntary) the enormous benefit funds with which to coerce the farmers into making the "voluntary" agreements would not be available and the result sought to be achieved by Congress, to wit, the regulation of agriculture within the several States, could not be accomplished.

Third, it seems plain that these taxes are not levied for the general welfare or a public purpose, as required by Article I, Section 8, Clause 1, of the Constitution. It is plain from the face of the Act that it is an attempt to redistribute purchasing power and the taxes provided by the Act are to be used solely for that purpose. Under Section 12(b) of the Act it is provided that "* * * for the purpose of effectuating the declared policy of this title, a sum equal to the proceeds derived from *all taxes* imposed under this title is hereby appropriated to be available to the Secretary of Agriculture * * *." That a tax cannot be levied on A for the purpose of paying a bounty to B was long ago held by this court in *Loan Association v. Topeka* (1874), 87 Wall. 655, 663, where Mr. Justice Miller said:

> "The power to tax is, therefore, the strongest, the most pervading of all the powers of the government, reaching directly or indirectly to all classes of the people. It was said by Chief Justice Marshall, in the case of McCullough v. The State of Maryland, that the power to tax is the power to destroy. A striking instance of the truth of the proposition is seen in the fact that the existing tax of ten per cent imposed by the United States on the circula-

> tion of all other banks than the National banks, drove out of existence every State bank of circulation within a year or two after its passage. This power can as readily be employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited wealth and prosperity to the other, if there is no implied limitation of the uses for which the power may be exercised."

It has been urged that the tax is constitutional because a favorable readjustment of the farmers' economic condition will ultimately redound to the general public good. The same sort of an argument was made to the court in *Loan Association v. Topeka, supra,* but the court rejected it, saying at page 665:

> "If it be said that a benefit results to the local public of a town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the innkeeper, the banker, the builder, the steamboat owner are equally promoters of the public good, and equally deserving the aid of the citizens by forced contributions."

While many assert that our economic difficulties are attributable to the condition of the farmer, there are still others who attribute it to the condition of the manufacturers or the condition of our export trade. If a tax can be levied to pay a bounty to farmers no reason is perceived why a tax may not be constitutionally levied to pay bounties to manu-

facturers or to those engaged in export trade or those engaged in any of our basic industries.

Finally, the processing tax provisions (Sec. 9),* even as altered by the amendment of August 24, 1935, violate Article I, Section 1, of the Constitution in making an unlawful delegation of legislative power to the Secretary of Agriculture. While the amendment provides for an initial processing tax on rice of 1c per pound (or $1.62 per barrel), nevertheless, under Sec. 9 the Secretary is given full power at any time to reduce, increase, modify or eliminate the tax, not by any practical standard, but largely by his opinion or prophecy of future prices and conditions. Where all such questions as to the duration of the tax and its increase or decrease or elimination are thus left to be resolved by the Secretary of Agriculture alone, it is clear that the Act still runs counter to Article I, Section 1, and is therefore unconstitutional. *Schechter Poultry Corporation, supra; Panama Refining Co. v. Ryan* (1934), 293 U. S. 388.

Point F

Certiorari Should Be Granted at the Present Time.

The opinion and order of the Circuit Court of Appeals, while interlocutory in form, in truth and in fact finally disposed of the case upon the merits. When it held that petitioner had a remedy at law and that the Courts below were without jurisdiction to grant the injunction prayed for (R. 98) the result

*Set out in Appendix D.

was a denial of all the relief sought by petitioner. Since the case will not come up for a hearing on its merits in the ordinary course of events until after the lapse of six or seven months the subject of the suit will be destroyed, the case become moot, and petitioner deprived of all right to have its case heard on the merits by any court unless this Court grants certiorari. If the order of the Circuit Court of Appeals is allowed to stand all the trial courts in the Circuit will feel bound thereby and will of necessity dismiss all bills filed in the Circuit for the purpose of testing the constitutionality of the taxes levied by the Agricultural Adjustment Act, as amended, with the result that not only your petitioner, but all other citizens living within the States of Texas, Louisiana, Mississippi, Alabama, Georgia and Florida be effectively deprived of any opportunity of testing the validity of this statute. There can be no question but that the constitutional questions raised in this case are grave and of national importance and this case involves an unprecedented situation. That the action of the Circuit Court of Appeals in denying the motion for an injunction to preserve the *status quo* pending appeal was wrong is plainly indicated by the fact that its action is contrary to the action of the Circuit Courts of Appeals for the Second, Sixth, Eighth, Ninth and Tenth Circuits, in granting injunctions in similar cases. It stands alone, unsupported by the decision of any other circuit. Its error can be corrected only by this Court now granting certiorari since there is

now before this Honorable Court a cause involving the constitutionality of the Agricultural Adjustment Act, which said cause is set for oral argument on December 9, 1935, and which will in the ordinary course of events be decided long prior to the time when this case would come up for hearing in the Circuit Court of Appeals. Without a writ of certiorari from this Honorable Court petitioner will have been compelled meanwhile to pay the taxes and if the Act be held unconstitutional its case would become moot and the taxes paid by it probably forever lost.

While the power to bring up a case pending in the Circuit Court of Appeals prior to final action in that Court is one to be sparingly exercised, the power nevertheless exists. *American Construction Company v. Jacksonville Railway* (1893), 148 U. S. 372. This Court said in *In Re Chetwood* (1897), 165 U. S. 443, 462:

> "And although, as observed in that case, this writ has not been issued as freely by this court as by the Court of Queen's Bench in England, and, prior to the Act of March 3, 1891, C. 517, 26 Stat. 826, had been ordinarily used as an auxiliary process merely, yet, whenever the circumstances imperatively demand that form of interposition the writ may be allowed, as at common law, to correct excesses of jurisdiction *and in furtherance of justice.*"

Likewise in *Harriman v. Northern Securities Company* (1905), 197 U. S. 244, 286, where the decree of the Circuit Court of Appeals actually dis-

posed of the entire case, although interlocutory in form, this Court granted certiorari. Other cases in which this Court has granted certiorari prior to a final decree in the Circuit Court of Appeals are *Denver v. New York Trust Company* (1913), 229 U. S. 123, 133; *Spiller v. Atchison, T. & S. F. Railway Company* (1920), 253 U. S. 117, 120; and *Dupont Powder Company v. Mastland* (1917), 244 U. S. 100. And in *The Three Friends* (1897), 166 U. S. 1, 49, this Court reviewed a decision of the District Court prior to action by the Circuit Court of Appeals on the appeal pending therein.

CONCLUSION

It is therefore respectfully submitted that this case is such as to call for the exercise by this Court of its supervisory powers. If the decisions of the District Court and the Circuit Court of Appeals stand, the result will be that petitioner will be deprived of its property without due process of law, and will be so deprived without any opportunity to test in the Courts the constitutional rights asserted in its bill of complaint. Unless this Honorable Court exercises such supervisory powers prior to the entry of a final decree in the Circuit Court of Appeals the subject matter of the suit will be destroyed, the suit become moot, and petitioner forever deprived of its constitutional rights. This Court should, therefore, review forthwith the decision of

the United States Circuit Court of Appeals for the Fifth Circuit and the decision of the District Court of the United States for the Eastern District of Louisiana.

Respectfully submitted,

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APPENDIX A

R. S. ART. 3224

No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

* * *

SECTION 21 OF AGRICULTURAL ADJUSTMENT ACT

SEC. 21 (*a*) No suit, action, or proceedings (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (*d*) of this section, may be reserved in the court's order.

(*b*) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regu-

lations of the Secretary with the approval of the President prior to the date of the adoption of this amendment, are hereby legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which have accrued and remain unpaid on the date of the adoption of this amendment shall be assessed and collected pursuant to Section 19, and to the provisions of law made applicable thereby. Nothing in this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary of Agriculture or of the President done or made prior to the date of the adoption of this amendment.

(*c*) The making of rental and benefit payments under this title, prior to the date of the adoption of this amendment, as determined, prescribed, proclaimed and made effective by the proclamations of the Secretary of Agriculture or of the President or by regulations of the Secretary, and the initiation, if formally approved by the Secretary of Agriculture prior to such date of adjustment programs under Section 8 (1) of this title, and the making of agreements with producers prior to such date, and the adoption of other voluntary methods prior to such date, by the Secretary of Agriculture under this title, and rental and benefit payments made pursuant thereto, are hereby legalized and ratified, and the making of all such agreements and payments, the initiation of such programs, and the adoption of all such methods prior to such date are hereby legalized, ratified, and confirmed as fully to all intents and purposes as if each such agreement, program, method, and payment had been specifically author-

ized and made effective and the rate and amount thereof fixed specifically by prior Act of Congress.

(*d*) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considerd by the court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (*a*) or (*c*) of Section 15, Section 16, or Section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of Section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by rea-

son of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be refunded or credited to any person (not a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (*a*) and (*b*) of Section 16, had the tax terminated by proclamation pursuant to the provisions of Section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish to the satisfaction of the Commissioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held

invalid a claim therefor (conforming to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2) no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, or jurisdiction of such courts based upon the amount in controversy.

(*e*) In connection with the establishment, by any claimant, of the facts required to be established in subsection (*d*) of this section, the Commissioner of Internal Revenue is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda; relative to any matter affecting the findings to be made by the Commissioner pursuant to subsection (*d*) of this section, to require the attendance of the claimant or of any officer or employee of the claimant, or the attendance of any other person having knowledge in the premises, and to take, or cause to be taken, his testimony with reference to any such matter, with power to administer oaths to such person or persons. It shall be lawful for the Commissioner, or any collector designated

by him, to summon witnesses on behalf of the United States or of any claimant to appear before the Commissioner, or before any person designated by him, at a time and place named in the summons, and to produce such books, papers, correspondence, memoranda, or other records as the Commissioner may deem relevant or material, and to give testimony or answer interrogatories, under oath, relating to any matter affecting the findings to be made by the Commissioner pursuant to subsection (*d*) of this section. The provisions of Revised Statutes 3174 and of Revised Statutes 3175 shall be applicable with respect to any summons issued pursuant to the provisions of this subsection. Any witness summoned under this subsection shall be paid, by the party on whose behalf such witness was summoned, the same fees and mileage as are paid witnesses in the courts of the United States. All information obtained by the Commissioner pursuant to this subsection shall be available to the Secretary of Agriculture upon written request therefor. Such information shall be kept confidential by all officers and employees of the Department of Agriculture, and any such officer or employee who violates this requirement shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both, and shall be removed from office.

(*f*) No refund, credit, or abatement shall be made or allowed of the amount of any tax, under Section 15, or Section 17, unless, within one year after the right to such refund, credit, or abatement has accrued, a claim for such refund, credit, or abatement (conforming to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled to such refund, credit, or abatement, except that if the right to any such refund, credit, or abatement accrued prior to the date of the adoption of this amendment, then

such one-year period shall be computed from the date of this amendment. No interest shall be allowed or paid, or included in any judgment, with respect to any such claim for refund or credit.

(*g*) The provisions of Section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax; or any refund or credit authorized by subsection (*a*) or (*c*) of Section 15, Section 16, or Section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of Section 317 of the Tariff Act of 1930.

APPENDIX B

PROVISIONS OF TITLE 26, U. S. C. DEALING WITH COLLECTION OF TAXES BY DISTRAINT

SEC. 115. *Lien for Taxes.* (*a*) If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. (Balance of Section deals with recording of lien and giving of releases.) (R. S. Sec. 3186; Mar. 1, 1879, C. 125, Sec. 3, 20 Stat. 331; Mar. 4, 1913, C. 166, 37 Stat. 1016; Feb. 26, 1925, C. 344, 43 Stat. 994; May 29, 1928, 8 a.m., C. 852, Title IV, Sec. 613, 45 Stat.)

116. *Distraint for Taxes.* If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with 5 per centum additional thereto, and interest as aforesaid, by distraint and sale, in the manner hereafter provided, of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid. (Balance of Section deals with exempt property.) (R. S. Sec. 3187; June 2, 1924, 4:01 p.m., C. 234, Sec. 1016, 43 Stat. 343.)

117. *Same; Levy.* In such case of neglect or refusal, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property

and rights to property, except such as are exempt by Section 116 of this title, belonging to such person, or on which the said lien exists, for the payment of the sum due as aforesaid, with interest and penalty for nonpayment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy. (R. S. Sec. 3188.)

118. *Same; Exhibit of Evidences Relating to Property.* All persons, and officers of companies or corporations, are required, on demand of a collector or deputy collector about to distrain or having distrained on any property, or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the tax due as aforesaid. (R. S. Sec. 3189.)

119. *Same; Proceedings On.* When distraint is made, as aforesaid, the officer charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the officer making such distraint, shall be left with the owner or possessor or such goods or effects, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded, and the time and place of sale; and the said officer shall forthwith cause a notification to be published in some newspaper within the county wherein said distraint is made, if a newspaper is published in said county, or to be publicly posted at the post office, if there be one within five miles nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Such notice shall specify the articles distrained, and the time and place for the sale thereof. Such time shall not be less than ten nor more than twenty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notice as herein

provided, and the place proposed for the sale shall not be more than five miles distant from the place of making such distraint. Said sale may be adjourned from time to time by said officer, if he deems it advisable, but not for a time to exceed in all thirty days. (R. S. Sec. 3190.)

120. *Same; Sale of Property Subject to Tax.* When property subject to tax, but upon which the tax has not been paid, is seized upon distraint and sold, the amount of such tax shall, after deducting the expenses of such sale, be first appropriated out of the proceeds thereof to the payment of the tax. And if no assessment of such tax has been made upon such property, the collector shall make a return thereof in the form required by law, and the Commissioner of Internal Revenue shall assess the tax thereon. (R. S. Sec. 3191.)

121. *Same; Sale of Property; Purchase for United States.* When any personal property is advertised for sale under distraint as aforesaid, the officer making the seizure shall proceed to sell such property at a public auction, offering the same at a minimum price, including the expenses of making the levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the officer conducting the sale may declare the same to be purchased by him for the United States. The property so purchased may be sold by the collector within whose district the sale was made under such regulations as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. The collector shall render to the Commissioner a distinct account of all charges incurred in such sales, and, in case of resale, shall pay into the Treasury the proceeds as provided in Section 3210 of the Revised Statutes, as amended (R. S. 3192, as amended May 10, 1934, 11:40 a.m., C. 277, Sec. 508, 48 Stat.)

122. *Same; Restoration of Property on Payment Before Sale.* (This merely provides for return of property distrained upon if tax is paid prior to sale.) (R. S. 3193.)

123. *Same; Effect of Certificate of Sale.* In all cases of sale, as aforesaid, the certificate of such sale shall be prima-facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale, and shall transfer to the purchaser all right, title, and interest of such delinquent in and to the property sold; and where such property consists of stocks, said certificate shall be notice, when received, to any corporation, company, or association of said transfer, and shall be authority to such corporation, company, or association to record the same on their books and records in the same manner as if transferred or assigned by the party holding the same, in lieu of any original or prior certificates, which shall be void, whether canceled or not. And said certificates, where the subject of sale is securities or other evidences of debt, shall be good and valid receipts to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt. (R. S. Sec. 3194.)

124. *Same; When Property Not Divisible.* (This deals with special case of indivisible property and allows sale of the whole even though its value exceeds amount of the tax. (R. S. Sec. 3195; June 2, 1924, 4:01 p.m., C. 234, Sec. 1031 (*a*), 43 Stat. 351; re-enacted Jan. 26, 1926, 10:25 a.m., C. 27, Title XI, Sec. 1128(a), 144 Stat. 124.)

125. *Real Estate; Sale to Satisfy Taxes.* When goods, chattels, or effects sufficient to satisfy the taxes imposed upon any person are not found by the collector or deputy collector, he is authorized to collect the same by seizure and sale of real estate. (R. S. Sec. 3196.)

126. *Same; Proceedings.* The officer making the seizure mentioned in Section 125 of this title shall give notice to the person whose estate it is proposed to sell by giving him in hand, or leaving at his last or usual place of abode, if he has any such within the collection district where said estate is situated, a notice, in writing, stating what particular estate is to be sold, describing the same with reasonable certainty, and the time when and place where said officer proposes to sell the same; which time shall not be less than twenty nor more than forty days from the time of giving said notice. The said officer shall also cause a notification to the same effect to be published in some newspaper within the county where such seizure is made, if any such there be, and shall also cause a like notice to be posted at the postoffice nearest to the estate seized, and in two other public places within the county; and the place of said sale shall not be more than five miles distant from the estate seized, except by special order of the Commissioner of Internal Revenue. At the time and place appointed, the officer making such seizure shall proceed to sell the said estate at public auction, offering the same at a minimum price, including the expense of making such levy, and all charges for advertising and an officer's fee of $10. (Balance of section deals with details of conducting sale.) (R. S. Sec. 3197; Feb. 27, 1877, C. 69, Sec. 1, 19 Stat. 248; Mar. 1, 1879, C. 125, Sec. 3, 20 Stat. 331; May 28, 1896, C. 252, 29 Stat. 179; Mar. 3, 1905, C. 1483, Sec. 1, 33 Stat. 1207; July 19, 1919, C. 24, Sec. 1, 41 Stat. 209.)

127. *Same; Certificate of Purchase; Deed.* (This provides for execution of deed by the collector to the purchaser.) (R. S. Sec. 3198.)

128. *Same; Deed Prima-Facie Evidence.* The deed of sale given in pursuance of Section 127 of this title shall be prima-facie evidence of the facts therein stated; and if the proceedings of the officer as set

forth have been substantially in accordance with the provisions of law, shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real estate thus sold at the time the lien of the United States attached thereto. (R. S. Sec. 3199.)

129. *Same; Place of Seizure (and Sale).* Any collector or deputy collector may, for the collection of taxes imposed upon any person, and committed to him for collection, seize and sell any of the property, real or personal (except property exempt from distraint and sale, under Section 3187 of the Revised Statutes, or any right or interest therein, of such person situated in any other collection district within the State in which such officer resides, notwithstanding the provisions of Section 3209 of the Revised Statutes; and his proceedings in relation thereto shall have the same effect as if the same were had in his proper collection district. (R. S. Sec. 3200; amended Jan. 26, 1926, 11:25 a.m., Title XI, Sec. 1129, 44 Stat. 125.)

130. *Same; Redemption Prior to Sale.* (This provides for return of property seized on payment of tax.) (R. S. Sec. 3201.)

131. *Same; Redemption After Sale.* (This provides for redemption after sale by payment to purchaser, within one year after the sale, of the purchase price with interest at 20% per annum.) (R. S. 3202.)

APPENDIX C

Penalty Provisions

Section 19(b) of the Agricultural Adjustment Act:

> "Sec. 19. * * * (*b*) All provisions of law, including penalties, applicable with respect to the taxes imposed by Section 600 of the Revenue Act of 1926, and the provisions of Section 626 of the Revenue Act of 1932, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable in respect of taxes imposed by this title: * * * ."

Section 1114 of 1926 Revenue Act, applicable with respect to taxes imposed by Section 600 of that Act:

> "Sec. 1114. (*a*) Any person required under this Act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act, who wilfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisioned for not more than one year, or both, together with the costs of prosecution.
>
> "(*b*) Any person required under this Act to collect, account for and pay over any tax imposed by this Act, who willfully fails to collect or truthfully account for and pay over such tax,

and any person who willfully attempts in any manner to evade or defeat any tax imposed by this Act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

"(*c*) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal-revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

"(*d*) Any person who willfully fails to pay, collect, or truthfully account for and pay over, any tax imposed by Titles IV, V, VI, VII, VIII, and IX, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of Section 3176 of the Revised Statutes, as amended, or for any offense for which a penalty has been recovered under Section 3256 of the Revised Statutes.

"(e) Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

"(f) The term 'person' as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs."

APPENDIX D

PROCESSING TAX PROVISIONS OF AGRICULTURAL ADJUSTMENT ACT, AS AMENDED, AS APPLIED TO RICE

SEC. 9. (*a*) To obtain revenue for extraordinary expenses incurred by reason of the national economic emergency, there shall be levied processing taxes as hereinafter provided. When the Secretary of Agriculture determines that any one or more payments authorized to be made under Section 8 are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation; except that * * * (2) in the case of rice, the Secretary of Agriculture shall, before April 1, 1935, proclaim that rental or benefit payments are to be made with respect thereto, and the processing tax shall be in effect on and after April 1, 1935. * * * In the case of rice, the period from August 1 to July 31, both inclusive, shall be considered to be the marketing year. The processing tax shall be levied, assessed, and collected upon the first domestic processing of the commodity, whether of domestic production or imported, and shall be paid by the processor. The rate of tax shall conform to the requirements of subsection (*b*). Such rate shall be determined by the Secretary of Agriculture as of the date the tax first takes effect, and the rate so determined shall, at such intervals as the Secretary finds necessary to effectuate the declared policy, be adjusted by him to conform to such requirements. The processing tax shall terminate at the end of the marketing year current at the time the Secretary proclaims that all payments authorized under Section 8 which are in effect are to be discontinued with

respect to such commodity. The marketing year for each commodity shall be ascertained and prescribed by regulations of the Secretary of Agriculture: * * *

(*b*) (1) The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, plus such percentage of such difference, not to exceed 20 per centum, as the Secretary of Agriculture may determine will result in the collection, in any marketing year with respect to which such rate of tax may be in effect pursuant to the provisions of this title, of an amount of tax equal to (A) the amount of credits or refunds which he estimates will be allowed or made during such period pursuant to section 15(c) with respect to the commodity (B) the amount of tax which he estimates would have been collected during such period upon all processing of such commodity which are exempt from tax by reason of the fact that such processings are done by or for a State, or a political subdivision or an institution thereof, had such processings been subject to tax. If, prior to the time the tax takes effect, or at any time thereafter, the Secretary has reason to believe that the tax at such rate, or at the then existing rate, on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, will cause or is causing such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depression of the farm price of the commodity, then the Secretary shall cause an appropriate investigation to be made, and afford due notice and opportunity for hearing to interested parties. If thereupon the Secretary determines and proclaims that any such result will oc-

cur or is occurring, then the processing tax on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be at such lower rate or rates as he determines and proclaims will prevent such accumulation of surplus stocks and depression of the farm price of the commodity, and the tax shall remain during its effective period at such lower rate until the Secretary, after due notice and opportunity for hearing to interested parties, determines and proclaims that an increase in the rate of such tax will not cause such accumulation of surplus stocks or depression of the farm price of the commodity. Thereafter the processing tax shall be at the highest rate which the Secretary determines will not cause such accumulation of surplus stocks or depression of the farm price of the commodity, but it shall not be higher than the rate provided in the first sentence of this paragraph. * * *

SPECIFIC TAX RATE—RICE

(3) For the period from April 1, 1935, to July 31, 1936, both inclusive, the processing tax with respect to rice shall be levied, assessed, collected, and paid at the rate of 1 cent per pound of rough rice. * * *

(6) (A) Any rate of tax which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6) on the processing of any commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be decreased (including a decrease to zero) in accordance with the formulae, standards, and requirements of paragraph (1) of

this subsection, in order to prevent such reduction in the quantity of such commodity or the products thereof domestically consumed as will result in the accumulation of surplus stocks of such commodity or the products thereof or in the depression of the farm price of the commodity, and shall thereafter be increased in accordance with the provisions of paragraph (1) of this subsection but subject to the provisions of subdivision (B) of this paragraph (6).

(B) If the average farm price of any commodity, the rate of tax on the processing of which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or is established pursuant to this paragraph (6), during any period of twelve successive months ending after July 1, 1935, consisting of the first ten months of any marketing year and the last two months of the preceding marketing year—

(*i*) is equal to, or exceeds by 10 per centum or less, the fair exchange value thereof, or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 20 per centum of the fair exchange value thereof.

(*ii*) exceeds by more than 10 per centum, but not more than 20 per centum, the fair exchange value thereof, the rate of such tax shall subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 15 per centum of the fair exchange value thereof.

(*iii*) exceeds by more than 20 per centum the fair exchange value thereof, the rate of such

tax shall (subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 10 per centum of the fair exchange value thereof.

(C) Any rate of tax which has been adjusted pursuant to this paragraph (6) shall remain at such adjusted rate unless further adjusted or terminated pursuant to this paragraph (6), until December 31, 1937, or until July 31, 1936, in the case of rice.

(D) In accordance with the formulae, standards, and requirements prescribed in this title, any rate of tax prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6) shall be increased.

(E) Any tax, the rate of which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6), shall terminate pursuant to proclamation as provided in section 9 (a) of this title or pursuant to section 13 of this title. Any such tax with respect to any basic commodity which terminates pursuant to proclamation as provided in section 9 (a) of this title shall again become effective at the rate prescribed in paragraph (2), (3), (4) or (5) of this subsection, subject however, to the provisions of subdivisions (A) and (B) of this paragraph (6), from the beginning of the marketing year for such commodity next following the date of a new proclamation by the Secretary as provided in section 9 (a) of this title, if such marketing year begins prior to December 31, 1937, or prior to July 31, 1936, in the case of rice, and shall remain at such rate until altered or terminated pursuant to the provisions of section 9 or terminated pursuant to section 13 of this title. * * *

(G) If the applicability to any person or circumstances of any tax, the rate of which is fixed in pursuance of this paragraph (6), is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be levied, assessed, collected, and paid (in lieu of all rates of tax fixed in pursuance of this paragraph (6) with respect to all tax liabilities incurred under this title on or after the effective date of each of the rates of tax fixed in pursuance of this paragraph (6)), rates of tax fixed under paragraph (2), (3), (4) or (5), and such rates shall be in effect (unless the particular tax is terminated pursuant to proclamation, as provided in section 9 (a) or pursuant to section (13) until altered by Act of Congress; except that, for any period prior to the effective date of such holding of invalidity, the amount of tax which represents the difference between the tax at the rate fixed in pursuance of this paragraph (6) and the tax at the rate fixed under paragraphs (2), (3), (4) and (5) shall not be levied, assessed, collected, or paid.

RICE—SPECIAL RULE

(7) In the case of rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to a processor, except that, where the producer processes his own rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to the place of processing. * * *

(*c*) For the purposes of part 2 of this title, the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period

specified in section 2; and, in the case of all commodities where the base period is the pre-war period, August 1909 to July 1914, will also reflect interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during said base period; and the current average farm price and the fair exchange value shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture. The rate of tax upon the processing of any commodity, in effect on the date on which this amendment is adopted, shall not be affected by the adoption of this amendment and shall not be required to be adjusted or altered, unless the Secretary of Agriculture finds that it is necessary to adjust or alter any such rate pursuant to section 9 (a) of this title.

(*d*) As used in part 2 of this title— * * *

(7) In the case of rice—

(A) The term "rough rice" means rice in that condition which is usual and customary when delivered by the producer to a processor.

(B) The term "processing" means the cleaning, shelling, milling (including custom milling for toll as well as commercial milling), grinding, rolling, or other processing (except grinding or cracking by or for the producer thereof for feed for his own livestock, cleaning by or directly for a producer for seed purposes, and drying) of rough rice; and in the case of rough rice with respect to which a tax-payment warrant has been previously issued or applied for by application then pending, the term "processing" means any one of the above mentioned processings or any preparation or handling in connection with the sale or other disposition thereof.

(C) The term "co-operating producer" means

any person (including any share-tenant or share-cropper) whom the Secretary of Agriculture finds to be willing to participate in the 1935 production-adjustment program for rice.

(D) The term "processor," as used in subsection (b-1) of section 15 of this title, means any person (including a co-operative association of producers) engaged in the processing of rice on a commercial basis (including custom milling for toll as well as commercial milling).

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1935

No. 581

T. SIMON,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND SUPPORTING BRIEF THEREON.

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BAKER, BOTTS, ANDREWS & WHARTON,
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United States Code, Title 26, Secs. 115-131 ..... 18, 19, 36
United States Code, Title 28, Sec. 347 16

No.....

IN THE

Supreme Court of the United States

T. SIMON,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

PETITION OF T. SIMON FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

MAY IT PLEASE THE COURT:

The petitioner, T. Simon, respectfully prays for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, to hear this cause prior to its decision by the Circuit Court of Appeals and to review the decision of the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, entered in this cause on October 28, 1935, and further to review the decision of the Circuit Court of Appeals in denying

the application of petitioner for a preliminary injunction pending the appeal of said cause in said Circuit Court of Appeals. Petitioner respectfully shows this Honorable Court:

1.

Questions Presented.

(*a*) Is the so-called Agricultural Adjustment Act, as amended on August 24, 1935, constitutional?

(*b*) Does Section 21(d) of said Act deprive petitioner of an adequate remedy at law?

(*c*) Does Article 3224 R. S. or Section 21(a) of said Act forbid the granting of an injunction when petitioner has no adequate remedy at law?

(*d*) If Section 21(a) of said Act forbids an injunction in a case where petitioner has no adequate remedy at law, is said Section 21(a) constitutional?

(*e*) If Congress may constitutionally deprive the Courts of jurisdiction to enjoin the collection of illegal taxes and at the same time deprive the taxpayer of any legal remedy to recover such illegal taxes, may the summary proceedings provided in Sections 115 to 131, Title 26, U. S. C., as amended, be constitutionally employed for the collection of such illegal taxes?

2.

Summary Statement of the Matter Involved.

Petitioner owns and operates a rice mill at Crowley, Louisiana. Under the Act of the 73rd

Congress, P. L. No. 10, approved on May 12, 1933, as amended, known as the Agricultural Adjustment Act, there is imposed a processing tax of 1c per pound upon the first processing or milling of rough rice. The amount of tax shown to be due by petitioner in its return filed for the month of September, 1935, was $33,531.86. This tax was due and payable to respondent on October 30, 1935. October 28, 1935, petitioner filed its bill in the District Court to restrain the collection of this tax and any tax which might become due in subsequent months on the ground that said tax was unconstitutional, that petitioner was without adequate remedy at law, and that without such injunction it would be irreparably damaged. (R. 2.) Respondent filed a motion to dismiss on the ground that the Court had been deprived of jurisdiction by Art. 3224, U. S. R. S., and Section 21(a) of the Agricultural Adjustment Act. (R. 54.) Seven similar suits were consolidated with this by Court order (R. 58) and the Court heard at the same time petitioner's motion for a preliminary injunction and respondent's motion to dismiss for want of jurisdiction. At the hearing petitioner introduced two affidavits in support of its allegation that, due to the peculiar nature of the rice business, it was impossible to accurately determine the profit or loss resulting from the processing and sale of any given lot of rice. (R. 60, 65.) The affidavits further showed that it is impossible to prove what part, if any, of the processing tax is passed forward to the consumer or back to the producer or what part is borne by the miller. Respondent intro-

duced the joint affidavit of three deputy Internal Revenue Collectors which affidavit was inconsistent with the affidavits of petitioner in only one respect. (R. 75.) At the conclusion of the hearing the Court denied petitioner's motion for a preliminary injunction and granted respondent's motion to dismiss upon the ground that the Court was deprived of jurisdiction by Article 3224, U. S. R. S., and Section 21(a) of said Act. (R. 79.) Said Article 3224* and Section 21(a)* forbid the granting of an injunction to restrain the collection of any tax, and of the processing tax here involved, respectively. Under Section 21(d)* of said Agricultural Adjustment Act it is provided that no tax collected under the Act may be recovered except upon proof satisfactory to the Commissioner of Internal Revenue that the payer of the tax had not, directly or indirectly, included such amount in the price of the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee of the commodity, and that the price paid by the taxpayer for the unprocessed commodity was not reduced by any part of such amount. The bill below, and supporting affidavits, show the manner in which rough rice is milled and the manner in which it is sold, and that from any given lot of rough rice many different grades and qualities of clean rice are produced. The usual and customary method of selling rice is to sell it on samples made up of mixtures of different lots of clean rice which in turn are derived from differ-

*Set out in Appendix to Brief.

ent lots of rough rice purchased from different parties, and when an order for clean rice is received, based on any particular sample, the miller fills the order of clean rice from a mixture from various lots of clean rice. Many sales are made during a given season made up of various mixtures of clean rice, and there is practically an unlimited combination of lots of clean rice that go into the various sales. There is no way of accurately allocating to the various lots of rice going into any given mix any definite part of the price received for the entire mix. (R. 16-21.) Petitioner's sworn bill and affidavits showed that for these reasons it is impossible for petitioner or any other rice miller to make the proof required for recovery of the tax paid, if the law be held unconstitutional, even if it were otherwise possible to make such proof. Petitioner's sworn bill alleged that unless the injunction prayed for was granted: (1) It would be without adequate remedy at law to recover the taxes paid in the event they be held unconstitutional; (2) if any legal remedy existed, it would entail a multiplicity of suits; (3) it would become subject to heavy civil and criminal penalties and (4) it would suffer great and irreparable damages for specific reasons set out. (R. 15, 16, 23.) Respondent filed no answer denying any of these allegations. Petitioner alleged below that the said Section 21(d) did not apply to its suit because petitioner had no adequate remedy at law. It alleged further that, if said section be interpreted as prohibiting the injunction prayed for, the said

section, together with the other provisions of the Act, violated the Fifth Amendment to the Constitution in that said unconstitutional taxes would be collected from petitioner and petitioner would have no remedy by which it could recover said taxes, if they were unlawful, and thereby petitioner would be deprived of the right to test the constitutionality of the taxes. (R. 23.) Petitioner offered to give such security as the Court might require if the injunction were granted. (R. 24.) There was neither pleading nor proof that the granting of the injunction would in any wise injure respondent if the tax were ultimately held constitutional.

On October 29, 1935, petitioner was allowed an appeal. (R. 81.) On the same day petitioner applied for, and was denied, an injunction pending appeal. (R. 80.) The record was duly filed in the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, on November 4, 1935, being Cause No. 7948 on the docket of that Court. On November 4, 1935, petitioner applied to said Circuit Court of Appeals for an injunction against the respondent pending the hearing of its appeal (R. 87), but the Circuit Court of Appeals on November 5, 1935, denied the application. (R. 98.)

3.

Reasons Relied Upon for the Allowance of the Writ.

This case, with its companion cases, presents an entirely unprecedented situation. It presents questions of gravity and importance. It involves the

constitutionality of an important Federal statute and the rulings of the Court below, insofar as they may be taken to have held the statute constitutional, are probably in conflict with the decisions of this Court in *Loan Association v. Topeka* (1874), 20 Wall. 655; *Child Labor Tax Case* (1922), 259 U. S. 20; *Hill v. Wallace* (1922), 259 U. S. 44; *Hammer v. Dagenhart* (1918), 247 U. S. 251; and *Schechter Poultry Corporation v. United States* (1935), 295 U. S. 495; and contrary to the decision of the United States Circuit Court of Appeals for the Second Circuit in *Butler et al. v. United States* (1935), 78 Fed. (2nd) 1. The District Court and the Circuit Court of Appeals in holding that Congress may constitutionally forbid the granting of an injunction against summary collection of taxes, while at the same time depriving the taxpayer of any adequate remedy at law, presents a constitutional question of great importance never decided by this Court and a question which should be definitely decided. Though this question has never been *directly* decided by this Court, the decisions of the Courts below probably conflict with the decisions of this Honorable Court in *Truax v. Corrigan* (1921), 257 U. S. 312; *Brinkerhoff-Faris Trust & Savings Company v. Hill* (1930), 281 U. S. 673, and inferentially *Graham & Foster v. Goodcell* (1931), 282 U. S. 409, 430, 431; *Michaelson v. United States* (1924), 266 U. S. 42, 64, 65, 66, and *Phillips v. Commissioner* (1931), 283 U. S. 589, 596. This holding was particularly erroneous when the respondent was, at the same time,

authorized to collect the tax by summary proceedings under Sections 115 to 131, Title 26, U. S. C., as amended.

In holding that Article 3224, U. S. R. S., and Section 21(a) of said Act deprive the courts of jurisdiction to grant an injunction under the unusual and extraordinary circumstances of this case, the courts below decided an important question of Federal law in a way probably in conflict with the decisions of this Honorable Court in *Hill v. Wallace* (1922), 259 U. S. 44, and *Miller, Collector, v. Standard Nut Margarine Company* (1932), 284 U. S. 498, and in conflict with the unreported decisions of the Second, Sixth, Eighth, Ninth and Tenth Circuit Courts of Appeals, which granted injunctions pending appeal in cases similar to the present case.

The District Court, in refusing to grant petitioner's motion for a preliminary injunction, and in refusing to grant petitioner's motion for an injunction pending appeal, and the Circuit Court of Appeals in refusing to grant petitioner's motion for an injunction pending appeal, have so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Honorable Court's power of supervision and this action of the courts below is probably in conflict with the decision of this Honorable Court in *Ohio Oil Company v. Conway* (1929), 279 U. S. 813, and is in conflict with the holdings of every other Circuit Court of Appeals which has passed upon this question, to wit, the Circuit Courts of Appeals for the Second, Sixth, Eighth, Ninth and Tenth Circuits.

4.

Reasons Relied Upon for the Allowance of Writ Before Action on the Merits by the Circuit Court of Appeals.

This case, with its companion cases, presents a situation unparalleled in American history. Under the provisions of Sections 115 to 131, Title 26, U. S. C., as amended, the respondent is armed with weapons for the immediate forcible collection of the tax from petitioner, and those similarly situated, which they are powerless to resist. The District Court and Circuit Court of Appeals below have, contrary to the decisions of all other Circuit Courts of Appeals passing upon the question, held themselves deprived of any jurisdiction whatsoever to grant petitioner any relief. In the ordinary course of events it will be six or seven months before petitioner's appeal to the Circuit Court of Appeals will be heard on the merits. Meanwhile, through collection of the tax the subject-matter of the appeal may be destroyed, and the case become moot before a hearing may be had in the Circuit Court of Appeals. In addition, the order of the court below, though apparently an interlocutory order, has the effect of finally disposing of the appeal on the merits. The questions involved are of great national importance, and deserve the prompt consideration of this Honorable Court. This petition raises important questions of constitutional law not raised by any other petition now before this Court, and particularly it raises the question whether the provisions of Sections 115 to 131, Title 26, U. S. C., as

amended, are constitutional, if it be held that Congress may constitutionally deprive a taxpayer of all adequate remedy at law to recover taxes illegally collected while at the same time forbidding the granting of an injunction to restrain their collection. Hundreds of similar suits throughout the country involve this question, as well as the others herein raised, and the situation thus presented is so unusual and unprecedented as to justify this Honorable Court in requiring the record below to be certified to it forthwith for decision.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari may issue out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Fifth Circuit commanding said court to certify and send to this Court, on a day certain, to be therein designated, a full and complete Transcript of the Record and all of the proceedings in the Circuit Court of Appeals in said cause entitled T. Simon, Appellant, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Appellee, No. 7948 on its docket, to the end that said cause may be reviewed and determined by this Court as provided by Section 240 of the Judicial Code, as amended, and that your petitioner may have such other and further relief or remedy in the premises as this Court may deem appropriate and in conformity with said provisions of the Judicial Code, and that said judgment of the

District Court be reversed by this Honorable Court and such relief granted as is appropriate to the cause.

T. SIMON,

By HOMER L. BRUCE,

JOHN P. BULLINGTON,
Attorneys for Petitioner.

Of Counsel,
BAKER, BOTTS, ANDREWS & WHARTON,
Houston, Texas.

No.....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

T. SIMON,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

The Opinions of the Courts Below.

The District Court wrote no opinion and the Circuit Court of Appeals has not yet rendered any decision on the merits of the appeal. The *per curiam* opinion of the Court denying the injunction pending appeal is found on page 98 of the record.

II.

Jurisdiction.

(1) Jurisdiction of this cause is conferred upon this Honorable Court by *Judicial Code, Section* 240, *as amended; United States Code, Title* 28, *Section* 347.

(2) The date of the judgment of the Trial Court to be reviewed is October 28, 1935 (R. 79), the date of the order of the Circuit Court of Appeals denying the injunction pending appeal sought to be reviewed is November 5, 1935. (R. 98.)

(3) The power of this Honorable Court to review the case prior to a disposition of it by the Circuit Court of Appeals and to review the action of the Circuit Court of Appeals in refusing to grant an interlocutory order to preserve the *status quo* is sustained by the following, among other, cases:

The Three Friends (1897), 166 U. S. 1, 49.
Denver v. New York Trust Company (1913), 229 U. S. 123, 133.
Harriman v. Northern Securities Company (1905), 197 U. S. 244, 286.
American Construction Company v. Jacksonville Railway (1893), 148 U. S. 372, 384.
Forsyth v. Hammon (1897), 166 U. S. 506, 513.
In re Chetwood (1897), 165 U. S. 443, 462.
McClellan v. Carland (1910), 217 U. S. 268, 277.
Hanover Star Milling Company v. Metcalf (1916), 240 U. S. 403, 408.
Gay v. Ruff (1934), 292 U. S. 25, 30.

III.

Statement of the Case.

A full statement of the case has been given under heading 2 in the petition and in the interest of brevity the statement is not repeated at this point.

IV.

Specification of Errors.

(1) The District Court erred in holding that it was without jurisdiction to hear petitioner's cause because of the provisions of R. S. Sec. 3224, and Sec. 21(a) of the Agricultural Adjustment Act, as amended.

(2) The District Court erred in refusing to grant petitioner a preliminary injunction pending a hearing on the merits.

(3) The District Court and Circuit Court of Appeals erred in holding that said Sec. 21(a) did not deprive petitioner of its property without due process of law contrary to the Fifth Amendment to the Constitution of the United States, in view of the allegations in the bill, admitted by the motion to dismiss, that petitioner was without remedy at law to recover the taxes paid if they were held to be illegal.

(4) The District Court and the Circuit Court of Appeals erred in holding that if said Sec. 21(a) forbade the granting of an injunction restraining the collection of the tax, and if petitioner had no remedy at law to recover the same, if it be held they were illegally collected; respondent could neverthe-

less employ the summary proceedings for immediate collection of the tax provided in Sections 115 to 131, Title 26, U. S. C., as amended, without depriving petitioner of its property without due process of law contrary to the Fifth Amendment to the Constitution of the United States.

(5) The District Court and the Circuit Court erred in holding that either or both R. S. §3224, and Sec. 21(a) of said Act prevented the granting of an injunction under the special and extraordinary circumstances presented by this case.

(6) The Circuit Court of Appeals erred in holding that petitioner had "a remedy at law to recover back any taxes illegally exacted."

(7) The Circuit Court of Appeals erred in refusing to grant petitioner an injunction to preserve the *status quo* pending its appeal from the order dismissing the bill.

(8) The Circuit Court of Appeals erred in refusing to grant petitioner an injunction pending the appeal for the purpose of preserving the appellate jurisdiction of that Court.

(9) The Circuit Court of Appeals erred in holding either or both R. S. §3224, and Sec. 21(a) of said Act "deprived the Court of jurisdiction to grant injunctive relief."

(10) The District Court and Circuit Court of Appeals erred in not holding the Agricultural Adjustment Act, as amended, to be violative of Art. 1, Sec. 1, Amendments Five and Ten of the Constitution of the United States.

Petitioner expects to rely on all of the foregoing specifications of error.

V.

ARGUMENT

Summary of the Argument.

Point A

Neither R. S. §3224, nor Sec. 21(a) of the Agricultural Adjustment Act, properly interpreted, bars injunctive relief in this case.

Point B

Sec. 21(d) of the Agricultural Adjustment Act deprives petitioner of any adequate remedy at law.

Point C

If R. S. §3224, and Sec. 21(a) of the Agricultural Adjustment Act forbid the granting of an injunction in this case, then they are unconstitutional.

Point D

The summary proceedings provided in Sections 115 to 131, Title 26, U. S. C., as amended, are unconstitutional when applied to a taxpayer who has been deprived of both legal and equitable remedies to test the constitutionality of the tax thus sought to be collected.

Point E

The Agricultural Adjustment Act, as amended, is unconstitutional.

Point F

This is a case where certiorari should be granted prior to the final decree by the Circuit Court of Appeals.

Point A

Inapplicability of R. S. §3224 and Section 21(a) of the Agricultural Adjustment Act.

In wording and in effect R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act, as amended, are for all practical purposes identical. For the convenience of the Court the two acts are here set out side by side:

R. S. §3224.	**A. A. A. Sec. 21(a).**
No suit	No suit, action or proceeding (including probate, administration, receivership, and bankruptcy proceedings)
shall be maintained in any court	shall be brought or maintained in any court
for the purpose of restraining the assessment or collection of any tax.	if such suit, action or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or

> collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment * * *.

This Court has consistently held that despite the apparently unconditional terms of R. S. §3224, injunctions against the collection of a tax may issue in proper cases. The latest expression of the Court on the point is found in *Miller v. Standard Nut Margarine Company* (1932), 284 U. S. 498, 509, where the Court said:

> "The section does not refer specifically to the rule applicable to cases involving exceptional circumstances. The general words employed are not sufficient, and it would require specific language undoubtedly disclosing that purpose, to warrant the inference that Congress intended to abrogate that salutary and well established rule. * * * It has never held the rule to be absolute, but has repeatedly indicated that extraordinary and exceptional circumstances render its provisions inapplicable. * * *
>
> " * * * * It requires no elaboration of the facts found to show that the enforcement of the Act against respondent would be arbitrary and oppressive, would destroy its business, ruin it financially and inflict loss for which it would have no remedy at law. It is clear that, by reason of the special and extraordinary facts and circumstances, Sec. 3224 does not apply."

See also Hill v. Wallace (1922), 259 U. S. 44, 62; Dodge v. Osborn, (1916), 240 U. S. 118, 121.

Section 21(a) was included in the amendment to the Act of August 24, 1935, after numerous suits to restrain the collection of the tax had been filed throughout the country in which the contention was made that the supposed tax was in fact no tax at all but a penalty. *e.g., Penn v. Glenn,* 10 Fed. Supp. 483, 484 (April 13, 1935); F. G. Vogt & Sons, Inc. v. Rothensies, 11 Fed. Supp. 225, 230 (July 17, 1935); Armour & Company v. Harrison (not yet reported, District Court, Northern District of Illinois), in which the Court said in connection with R. S. §3224:

> "Merely to call this exaction a tax does not make it a tax. It is not levied for governmental purposes; therefore, it is not a tax. Therefore, the statute has no application to it."

The obvious purpose of Congress in including this section in the amendment was to make certain its intention that the principle of R. S. §3224 should apply to suits brought to restrain collection of these particular taxes. Having expressed its intention in words practically identical with those used in R. S. §3224, the amendment must be interpreted in the light of the well settled rule that, when a statute is reenacted in the same words as a previous statute which has received a judicial interpretation, the re-enacted statute includes the previous judicial interpretation. Louisville Cement Co. v. Interstate Commerce Commission (1918), 246 U. S. 638, 644.

Further it must be interpreted in the light of the

rule that a statute, susceptible of two constructions, should be construed in such a way as not to raise doubts as to its constitutionality. *Panama R. R. Co. v. Johnson* (1924), 264 U. S. 375; *Michaelson v. United States* (1924), 266 U. S. 42. As will be pointed out hereafter, to interpret this statute in the manner in which it has been interpreted below would raise grave doubts as to its constitutionality.

Interpreting these statutes as not forbidding injunctive relief in *all* cases we may pass to a discussion of whether extraordinary and exceptional circumstances exist in this case such as would render them inapplicable.

Point B

Section 21(d) of the Agricutural Adjustment Act Deprives Petitioner of Its Remedy at Law.

Section 21(d)* forbids the return of any taxes illegally collected under the Act unless the taxpayer proves, to the satisfaction of the Commissioner, that neither the taxpayer nor any person directly or indirectly under his control has, directly or indirectly, included the amount of the tax or any part thereof in the price of the commodity with respect to which it was imposed, or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner or included any part of such amount in the charge or fee

*Printed in the appendix.

for processing, and that the price paid by the taxpayer for the commodity was not reduced by any part of the tax paid. This, obviously, was an attempt to enact into law the economic theory that the burden of any tax imposed upon a manufacturer or processor is ultimately passed on to others. In speaking of a sales tax, Mr. Justice Stone and Mr. Justice Brandeis, dissenting in *Indian Motorcycle Company v. U. S.* (1931), 283 U. S. 570, 581, said:

> "In the Panhandle Oil Case, it was held that this shifting of the burden of a State tax from the seller to the buyer was sufficient to render the tax invalid where the buyer was an agency of the United States, and it was assumed that the burden of the sales tax involved was so inevitably passed on to the buyer as to require this result. With this assumption economists would not, I believe, generally agree. Many hold that whether the burden of any tax paid by the seller is actually passed on to the buyer depends upon considerations so various and complex as to preclude the assumption *a priori* that any particular tax at any particular time is passed on. In some conditions of the market, the burden remains with the seller, or even may be shifted back from the seller to the producer by the reduction of the producer's price, rather than forward to the consumer by an increase of the seller's price."

Likewise Mr. Justice Holmes speaking for the full Court in *Lash's Products Company v. U. S.* (1929), 278 U. S. 175, 176, said:

> "The phrase 'passed the tax on' is inaccurate, as obviously the tax is laid and remains on the

> manufacturer and on him alone. Heckman & Co. v. I. S. Dawes & Son Co., 12 F. (2d) 154. The purchaser does not pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all."

A sales tax is of course easily identifiable, or capable of identification, because levied on the sale of a given identifiable object and based upon the price at which the object is sold. If the question of whether such a tax has been "passed on" is so debatable, how much more so must be the case of a tax, such as a processing tax, which is carried as a part of the processor's expenses of operation? Even more complicated is the situation when, as here, the price paid to the producer and by the consumer fluctuates from day to day on competitive markets influenced by complex and manifold economic factors. However, whatever the merits of the theory *qua* theory, there can be no question that in order to make *factual proof* as to whether a processing tax has been "passed on" it must be shown that the price to the vendee has been increased *because* of the tax, or that the price paid to the producer has been reduced *because* of the tax. When a commodity, such as rice, is bought and sold on competitive markets such proof can be made only by proving what the market *would have been* had there been no tax. This Court held in *International Harvester Company v. Kentucky* (1914), 234 U. S. 216, 223, that the determination of what the market price of a given article would have been under different cir-

cumstances "is a problem that no human ingenuity could solve," and that:

> "The reason is not the general uncertainties of a jury trial but that the elements necessary to determine the imaginary ideal are uncertain both in nature and degree of effect to the acutest commercial mind. The very community, the intensity of whose wish relatively to its other competing desires determines the price that it would give, has to be supposed differently organized and subject to other influences than those under which it acts. * * *
>
> " * * * To compel them to guess on peril of indictment what the community would have given for them if the continually changing conditions were other than they are, to an uncertain extent; to divine prophetically what the reaction of only partially determinate facts would be upon the imaginations and desires of purchasers, is to exact gifts that mankind does not possess."

The situation involved in this case is many times more complex than that in the case just referred to. The manner in which the rice milling business is conducted is too complicated to set out in the confines of this brief but is fully set out in the petition and affidavits in support thereof. (R. 16-21, 60-75.) Because of the manner in which the rice milling business is, and must be, conducted it is impossible for a miller to tell accurately whether he has made a profit or loss with respect to the purchase, milling, and sale of a given lot of rough rice. (R. 62.) He can make a book figure with regard to any such lot

of rice by the use of averages, estimates, and arbitraries but that is all. He can only tell, at the end of the season, whether he has made a gain or loss on the season's operations. (R. 62.) The processing tax is levied upon each lot of rice based upon its weight at the time it reaches the mill and in order to recover the tax paid on such rice, under the provisions of Sec. 21(d), the miller must prove that he did not "pass on" the tax with respect to that particular lot of rice. Since he cannot even determine whether he made a profit or a loss on the particular transaction, it is manifestly impossible for him to know, much less prove, whether he has passed the tax on. However, even if he were able to prove exactly the amount of profit he made on each transaction, he would still have proved nothing but that. For all that he, or anyone else, could know he might have been able to sell the particular lot of rice for exactly the same price even if there had been no tax and he might have been able to purchase it for exactly the same price had there been no tax. On the face of it such matters are incapable of proof or even a sound guess. The miller cannot control the market on which he buys nor that on which he sells but he is compelled to buy and sell on those markets if he is to stay in the rice milling business. This lack of control of the markets by the miller is illustrated by the fact that the present cost of rough rice, plus operatings costs, including tax, is more than the miller can reasonably expect to get out of the products processed from it on the present market

for clean rice and rice products. (R. 62.) Manifestly under such circumstances no one can know, much less prove, whether the ultimate burden of the tax has fallen on the producer, the miller, or the purchaser. An analogous situation arises where a trademark has been infringed and the question arises as to how much of the sales price received by the infringer is attributable to the use of the trademark and how much to the intrinsic value of the object sold. In *Hamilton Shoe Company v. Wolf Bros.* (1916), 240 U. S. 251, 260, this Court held that in such a case it would, in the very nature of things, be impossible to ascertain to what extent the infringer could have effected sales and at what prices except for the use of the trademark. The same principle is applicable here—it is inherently impossible, in the circumstances of this case, for petitioner, or any other rice miller, to ascertain or prove to what extent he could have "effected sales and at what prices" except for the existence of the processing tax.

More than a thousand suits to enjoin the collection of these taxes have been filed throughout the United States. Insofar as petitioner knows the government has never yet been able to suggest *how* the proof required by the statute can be made. The government has satisfied itself with the simple assertion that proof *can* be made and with citing the opinion of this Court in *United States v. Jefferson Electric Manufacturing Company* (1934), 291 U. S. 386, 402, where the Court said:

"If the taxpayer has borne the burden of the tax, he can readily show it." * * *

The tax involved in that case was a tax upon the *sale* of a definite determinable object and amounted to 5% of the price for which the object was sold. The tax was not upon the manufacture, or the manufacture *and* sale. *Indian Motor Cycle Company v. United States* (1931), 283 U. S. 570, 574. In determining whether the payer of the tax collected it from the vendee or paid it himself there were no such complications as here exist. Indeed it was not suggested by anyone that the required proof could not be made; only that the taxpayer should not have to make it because the tax involved in the suit had been paid prior to the passage of the Act and at a time when it would not have been necessary for the payer to make such proof to procure refund. (P. 401.) The present case came before the Circuit Court of Appeals on a *final judgment dismissing the bill* on motion of the respondent which admitted the allegation that the proof required by the Act was impossible of being made. Nevertheless, and in the face of this, the Circuit Court of Appeals held that petitioner had "a" remedy at law (nothing being said as to the *adequacy* of it). Petitioner asserts that on the face of the Act, considering the *kind* of tax involved, an impossible burden of proof is placed upon petitioner. Petitioner further asserts that even if this were not true the Courts below should have enjoined the collection of the tax until such time as the courts could make a finding upon the

fact question of whether, under the peculiar conditions of the rice milling industry, the proof could be made. Respondent has not denied the allegations of petitioner's bill in this respect and under the circumstances the Court should not have dismissed the bill but was under the plain duty of preserving the *status quo* until such time as the facts upon which petitioner's constitutional rights depended could be fully determined. *cf Ohio Oil Company v. Conway* (1929), 279 U. S. 813.

Besides the lack of any adequate remedy at law this case presents several other grounds for equitable relief which have been held sufficient by this Court for the enjoining of the collection of a tax:

1. Multiplicity of suits (R. 23). *Wilson v. Illinois Southern Railroad* (1924), 263 U. S. 574; *Raymond v. Chicago Union Traction Company* (1907), 207 U. S. 20.

2. Congress has made no appropriation to repay any of these taxes if illegally collected, even if an adequate remedy at law were available, and in view of the tremendous amount involved it is improbable that any such appropriation will be made. (R. 24.) *Stewart Dry Goods Company v. Lewis* (1932), 287 U. S. 9.

3. The statute purporting to give the legal remedy has never been interpreted by the Courts and for this reason, if no other, petitioner's remedy at law cannot be said to be adequate. *Atlantic Coast Line v. Daughton* (1923), 262 U. S. 413. *cf Union Pacific Railroad v. Weld County* (1917), 247 U. S. 282.

4. The existence of the heavy civil and criminal penalties provided by Section 19(b) of the

Act*. (R. 15.) *Ex Parte Young* (1908), 209 U. S. 123, 146; *Wallace v. Hines* (1920), 253 U. S. 66.

POINT C

Unconstitutionality of R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act Under the Circumstances of This Case.

The argument is made that the District Courts and Circuit Courts of Appeals, not being constitutional courts, may be completely abolished by Congress and therefore Congress may place any desired restriction on their jurisdiction. The answer to this is that Congress has not abolished the District Courts nor the Circuit Courts of Appeals and not having abolished them the Congress may not constitutionally deprive one class of citizens of the right to equitable relief therein while at the same time and under similar circumstances other taxpayers are permitted to obtain such relief. Persons other than those subject to the processing tax from whom illegal taxes are sought to be collected may enjoin their collection under special and extraordinary circumstances. *Hill v. Wallace, supra; Miller v. Standard Nut Margarine Company, supra.* The right to protect one's property by invoking the aid of courts is as much a property right as the property itself, and to deny one class of citizens this right while granting it to others under similar circumstances

*The applicable penalty provisions are copied in Appendix C hereto.

is to deprive the class so denied of its property without due process of law. In *Truax v. Corrigan* (1921), 257 U. S. 312, which involved an Arizona statute which forbade the issuance of injunctions to protect property rights in cases of labor disputes the contention was made in support of the validity of the statute that the State could have completely abolished the lower courts and therefore the State could put such limitations as it desired upon their jurisdiction. This court nevertheless held the statute violative of the Fourteenth Amendment. Since the validity of exertions by the Federal Government of any of its delegated powers under the Fifth Amendment are to be measured by the same standards by which exertions of State power are measured under the Fourteenth Amendment, *Hamilton v. Kentucky Distilleries Co.* (1919), 251 U. S. 146, 156, it would seem clear that R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act are unconstitutional if they be construed as depriving courts of jurisdiction to issue injunctions to protect property rights in tax cases where the taxpayer is without remedy, or at least adequate remedy, at law.

In *Brinkerhoff-Faris Trust & Savings Company v. Hill* (1930), 281 U. S. 673, the Supreme Court of Missouri held that the trial court properly dismissed a bill seeking to enjoin the illegal assessment and collection of taxes on the ground that the taxpayer should first have pursued remedies before the State Board of Equalization. That court had

previously held that the State Board of Equalization was without jurisdiction to hear such complaints. The effect of the second decision was to deprive the petitioner of all right to test the validity of the tax. This court held that this amounted to a deprivation of petitioner's property without due process of law, Mr. Justice Brandeis saying:

> "Whether acting through its judiciary or through its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it."

This language is exactly applicable to the instant case and seems conclusive that if R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act be construed as forbidding injunctive relief in this case they are unconstitutional. See also *Graham & Foster v. Goodcell* (1931), 282 U. S. 409, 430, 431.

However absolute the power of Congress to destroy the jurisdiction of the inferior Federal Courts may seem, it is no more absolute than the apparent power of the State to arbitrarily exclude a foreign corporation from doing business within its borders. Nevertheless, this court has held, *Fidelity & Deposit Company v. Tafoya* (1926), 270 U. S. 426, that this "most absolute seeming" right was qualified and in some circumstances could become wrong, and that despite this apparently unqualified right the State could not impose an unconstitutional condition upon the foreign corporation coming into the

State. The exercise of Congress's right to limit the equity jurisdiction of the lower Federal Courts in the granting of injunctions in tax cases such as the present would be, as in the case just cited, for the purpose of securing a result forbidden by the Fifth Amendment, i. e., the deprivation of petitioner's property without due process of law, and may not stand.

There is still another reason why these statutes, if construed to absolutely and in all cases forbid injunctions, are unconstitutional. The Constitution, Article III, Section 1, vests the judicial power of the United States in one Supreme Court and such inferior courts as the Congress may from time to time ordain and establish. By Section 2 of Article III this judicial power extends to all cases in law and *equity* arising under the Constitution and laws of of the United States. Congress having established the District Courts and the Circuit Courts of Appeals, they, by virtue of the Constitution, at once become vested with judicial power in all cases arising under the Constitution and laws of the United States. These inferior courts derive their *judicial power* from the Constitution and not from any act of Congress. Congress may well have the power to regulate the procedure in these courts and to define their jurisdiction but Congress may not, it is submitted, deprive the courts of their *inherent judicial powers* which naturally follow from the Constitutional grant of those powers. This was expressly held in *Michaelson v. United States*

(1924), 266 U. S. 42, 64, 65, 66, where the court said:

> *"If the statute now under review encroaches upon the equity jurisdiction intended by the Constitution, a grave constitutional question in respect of its validity would be presented;* and it, therefore, becomes our duty, as this Court has frequently said, to construe it 'if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score.' Panama R. R. Co. v. Johnson, 264 U. S. 375.
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> * * *
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> "But it is contended that the statute materially interferes with the inherent power of the courts and is therefore invalid. That the power to punish for contempts is inherent in all courts, has been many times decided and may be regarded as settled law. It is essential to the administration of justice. *The courts of the United States, when called into existence and vested with jurisdiction over any subject, at once become possessed of the power.* So far as the inferior Federal Courts are concerned, however, it is not beyond the authority of Congress (*Ex parte* Robinson, 19 Wall. 505, 510-511; Bessette v. W. B. Conkey Co., 194 U. S. 324, 326); *but the attributes which inhere in that power and are inseparable from it can neither be abrogated nor rendered practically inoperative.* That it may be regulated within limits not precisely defined may not be doubted. The statute now under review is of the latter character."

The power of courts of equity to issue injunctions to protect property rights, which could not otherwise be protected, is quite as inherent as the power

to punish for contempt. Conceding the authority of Congress to regulate or limit the use of the power, to an undefined extent, the case here presents no such situation, for to interpret the acts as depriving the courts of the power to issue injunctions in *every case* involving the collection of the tax, would be to completely destroy one of the inherent powers of the court which it possesses by virtue of Section 2 of Article III of the Constitution. For these reasons petitioner submits that R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act, so construed, are unconstitutional.

Point D

Unconstitutionality of Summary Proceedings for Collection of the Tax.

Under Sections 115 to 131, Title 26, U. S. C., as amended,* which are incorporated into the present Act, the Commissioner is authorized to collect the taxes, upon non-payment, by the fixing of liens on all of petitioner's property or by the levying of distraints against petitioner's property, including bank accounts, etc. The procedure is summary and under the distraint proceedings it would be entirely possible for the Commissioner to collect the full tax alleged to be owed by petitioner before petitioner could even know any proceedings had been started to collect the tax. All that would be necessary would be for the Commissioner or a deputy to walk

*Printed in Appendix B.

to petitioner's bank with the proper papers and distrain petitioner's money there deposited. The constitutionality of this summary procedure was upheld in *Phillips v. Commissioner* (1931); 283 U. S. 589, 596, upon the express ground that under existing statutes the taxpayer was given ample opportunity to ultimately test the liability for the tax in a court of law, the court saying:

> "Where only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, *if the opportunity given for the ultimate judicial determination of the liability is adequate.* Springer v. United States, 102 U. S. 586, 593; Scottish Union & National Ins. Co. v. Bowland, 196 U. S. 611, 631."

Under the facts of this case plaintiff is deprived of all legal remedy to recover the tax collected, if it be held illegal, because of the impossible burden of proof petitioner would have to meet in such a suit and, if R. S. §3224 and Sec. 21(a) be so construed, petitioner is deprived of the right to test the validity of the tax by a suit for an injunction. To permit the government to summarily seize petitioner's property under these circumstances would be to deprive petitioner of his property without due process of law and to argue this further would be to argue the obvious. See, in addition to the case cited, *Lipke v. Lederer* (1922), 259 U. S. 557, 562; *Carpenter v. Shaw* (1930), 280 U. S. 363, 369; *Ward v. Love County* (1920), 253 U. S. 17.

Point E

The Agricultural Adjustment Act, as Amended, Is Unconstitutional.

Petitioner asserts that the Agricultural Adjustment Act, as amended, is unconstitutional for the following reasons:

1. The Act, though in form a revenue measure, is in fact an attempt to regulate the price at which petitioner buys and sells rice in intrastate commerce.

2. The Act is an attempt to control the production of agricultural commodities within the several States.

3. The taxes are not levied for the general welfare or for a public purpose.

4. The Act, as amended, contains an unconstitutional delegation of legislative power to the Secretary of Agriculture.

Section 2(1) of the Act declares the policy of the Act to be "to establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. * * *" The rice miller is still compelled to pay the market price for all rice bought from farmers, and in addition thereto he is compelled to pay $1.62 per barrel

on the rice so purchased, which $1.62 in turn is given to the farmer under the guise of benefit payments. The object is to raise the price to the farmer and that object is obtained in part, at least, by compelling petitioner to pay at least $1.62 per barrel more for his rice than he would otherwise have to pay. Since the purchase is wholly within intrastate commerce, it is unquestionably beyond the power of the Federal Government to control. *Hill v. Wallace* (1922), 259 U. S. 44; *Schechter Poultry Corporation v. United States* (1935), 295 U. S. 495; *Butler v. United States of America* (C. C. A., First, 1935), 78 Fed. (2nd) 1. Congress being without power by direct regulation to fix or control these prices, it cannot achieve the same result by casting a law having that purpose into the form of a revenue measure. *Child Labor Tax Case* (1922), 259 U. S. 20; *Hill v. Wallace, supra; Hammer v. Dagenhart* (1918), 247 U. S. 251.

Secondly, the Act attempts to control and reduce the production of agricultural commodities by farmers within the several States. In Section 8(1) the Secretary of Agriculture is authorized

> "to provide for reduction in the acreage or reduction in the production for market, or both, of any basic agricultural commodity, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith or upon that part of the production of any basic agricultural commodity required for domestic consumption, such amounts as the Secretary deems fair and reasonable." * * *

Of all industries, agriculture is the most essentially intrastate, and this has long been recognized by this Court. *Kidd v. Pearson* (1888), 128 U. S. 1, 21; *Heisler v. Thomas Colliery Company* (1922), 260 U. S. 245, 259; *Industrial Association v. United States* (1925), 268 U. S. 64, 82. Since the Act has for its purpose the regulation of this purely intrastate matter, *Schecter Poultry Corporation v. U. S., supra; Hill v. Wallace, supra,* the tax levied to effectuate this purpose must fall. *Child Labor Tax Case, supra; Railroad Retirement Board v. Alton Railroad Company* (1935), 295 U. S. 330; *Gibbons v. Ogden* (1824), 9 Wheat. 1, 199.

The fact that the arrangements between the Secretary of Agriculture and the individual farmers by which the latter reduce their acreage and the former makes benefit payments to them therefor out of the taxes collected from processors does not make the Act in purpose and effect any the less a regulation of agriculture within the State. *cf. Schecter Poultry Corporation v. U. S., supra,* p. 529. The arrangements are made by virtue of, and under authority of, the law, and it is idle to say that the act of the farmer in reducing his acreage pursuant to the contract with the Secretary of Agriculture is voluntary when the farmer knows that if he does not execute such agreement he is subjected to the penalty of having to sell his commodity at the same price at which other farmers sell it minus the substantial amount received by the other farmers by way of benefit payments. (R. 41.) Further-

more, without the tax provisions in the Act (which are certainly not voluntary) the enormous benefit funds with which to coerce the farmers into making the "voluntary" agreements would not be available and the result sought to be achieved by Congress, to wit, the regulation of agriculture within the several States, could not be accomplished.

Third, it seems plain that these taxes are not levied for the general welfare or a public purpose, as required by Article I, Section 8, Clause 1, of the Constitution. It is plain from the face of the Act that it is an attempt to redistribute purchasing power and the taxes provided by the Act are to be used solely for that purpose. Under Section 12(b) of the Act it is provided that "* * * for the purpose of effectuating the declared policy of this title, a sum equal to the proceeds derived from *all taxes* imposed under this title is hereby appropriated to be available to the Secretary of Agriculture * * *." That a tax cannot be levied on A for the purpose of paying a bounty to B was long ago held by this court in *Loan Association v. Topeka* (1874), 87 Wall. 655, 663, where Mr. Justice Miller said:

> "The power to tax is, therefore, the strongest, the most pervading of all the powers of the government, reaching directly or indirectly to all classes of the people. It was said by Chief Justice Marshall, in the case of McCullough v. The State of Maryland, that the power to tax is the power to destroy. A striking instance of the truth of the proposition is seen in the fact that the existing tax of ten per cent imposed by the United States on the circula-

> tion of all other banks than the National banks, drove out of existence every State bank of circulation within a year or two after its passage. This power can as readily be employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited wealth and prosperity to the other, if there is no implied limitation of the uses for which the power may be exercised."

It has been urged that the tax is constitutional because a favorable readjustment of the farmers' economic condition will ultimately redound to the general public good. The same sort of an argument was made to the court in *Loan Association v. Topeka, supra,* but the court rejected it, saying at page 665:

> "If it be said that a benefit results to the local public of a town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the innkeeper, the banker, the builder, the steamboat owner are equally promoters of the public good, and equally deserving the aid of the citizens by forced contributions."

While many assert that our economic difficulties are attributable to the condition of the farmer, there are still others who attribute it to the condition of the manufacturers or the condition of our export trade. If a tax can be levied to pay a bounty to farmers no reason is perceived why a tax may not be constitutionally levied to pay bounties to manu-

facturers or to those engaged in export trade or those engaged in any of our basic industries.

Finally, the processing tax provisions (Sec. 9),* even as altered by the amendment of August 24, 1935, violate Article I, Section 1, of the Constitution in making an unlawful delegation of legislative power to the Secretary of Agriculture. While the amendment provides for an initial processing tax on rice of 1c per pound (or $1.62 per barrel), nevertheless, under Sec. 9 the Secretary is given full power at any time to reduce, increase, modify or eliminate the tax, not by any practical standard, but largely by his opinion or prophecy of future prices and conditions. Where all such questions as to the duration of the tax and its increase or decrease or elimination are thus left to be resolved by the Secretary of Agriculture alone, it is clear that the Act still runs counter to Article I, Section 1, and is therefore unconstitutional. *Schechter Poultry Corporation, supra; Panama Refining Co. v. Ryan* (1934), 293 U. S. 388.

POINT F

Certiorari Should Be Granted at the Present Time.

The opinion and order of the Circuit Court of Appeals, while interlocutory in form, in truth and in fact finally disposed of the case upon the merits. When it held that petitioner had a remedy at law and that the Courts below were without jurisdiction to grant the injunction prayed for (R. 98) the result

*Set out in Appendix D.

was a denial of all the relief sought by petitioner. Since the case will not come up for a hearing on its merits in the ordinary course of events until after the lapse of six or seven months the subject of the suit will be destroyed, the case become moot, and petitioner deprived of all right to have its case heard on the merits by any court unless this Court grants certiorari. If the order of the Circuit Court of Appeals is allowed to stand all the trial courts in the Circuit will feel bound thereby and will of necessity dismiss all bills filed in the Circuit for the purpose of testing the constitutionality of the taxes levied by the Agricultural Adjustment Act, as amended, with the result that not only your petitioner, but all other citizens living within the States of Texas, Louisiana, Mississippi, Alabama, Georgia and Florida be effectively deprived of any opportunity of testing the validity of this statute. There can be no question but that the constitutional questions raised in this case are grave and of national importance and this case involves an unprecedented situation. That the action of the Circuit Court of Appeals in denying the motion for an injunction to preserve the *status quo* pending appeal was wrong is plainly indicated by the fact that its action is contrary to the action of the Circuit Courts of Appeals for the Second, Sixth, Eighth, Ninth and Tenth Circuits, in granting injunctions in similar cases. It stands alone, unsupported by the decision of any other circuit. Its error can be corrected only by this Court now granting certiorari since there is

now before this Honorable Court a cause involving the constitutionality of the Agricultural Adjustment Act, which said cause is set for oral argument on December 9, 1935, and which will in the ordinary course of events be decided long prior to the time when this case would come up for hearing in the Circuit Court of Appeals. Without a writ of certiorari from this Honorable Court petitioner will have been compelled meanwhile to pay the taxes and if the Act be held unconstitutional its case would become moot and the taxes paid by it probably forever lost.

While the power to bring up a case pending in the Circuit Court of Appeals prior to final action in that Court is one to be sparingly exercised, the power nevertheless exists. *American Construction Company v. Jacksonville Railway* (1893), 148 U. S. 372. This Court said in *In Re Chetwood* (1897), 165 U. S. 443, 462:

> "And although, as observed in that case, this writ has not been issued as freely by this court as by the Court of Queen's Bench in England, and, prior to the Act of March 3, 1891, C. 517, 26 Stat. 826, had been ordinarily used as an auxiliary process merely, yet, whenever the circumstances imperatively demand that form of interposition the writ may be allowed, as at common law, to correct excesses of jurisdiction *and in furtherance of justice.*"

Likewise in *Harriman v. Northern Securities Company* (1905), 197 U. S. 244, 286, where the decree of the Circuit Court of Appeals actually dis-

posed of the entire case, although interlocutory in form, this Court granted certiorari. Other cases in which this Court has granted certiorari prior to a final decree in the Circuit Court of Appeals are *Denver v. New York Trust Company* (1913), 229 U. S. 123, 133; *Spiller v. Atchison, T. & S. F. Railway Company* (1920), 253 U. S. 117, 120; and *Dupont Powder Company v. Mastland* (1917), 244 U. S. 100. And in *The Three Friends* (1897), 166 U. S. 1, 49, this Court reviewed a decision of the District Court prior to action by the Circuit Court of Appeals on the appeal pending therein.

CONCLUSION

It is therefore respectfully submitted that this case is such as to call for the exercise by this Court of its supervisory powers. If the decisions of the District Court and the Circuit Court of Appeals stand, the result will be that petitioner will be deprived of its property without due process of law, and will be so deprived without any opportunity to test in the Courts the constitutional rights asserted in its bill of complaint. Unless this Honorable Court exercises such supervisory powers prior to the entry of a final decree in the Circuit Court of Appeals the subject matter of the suit will be destroyed, the suit become moot, and petitioner forever deprived of its constitutional rights. This Court should, therefore, review forthwith the decision of

the United States Circuit Court of Appeals for the Fifth Circuit and the decision of the District Court of the United States for the Eastern District of Louisiana.

Respectfully submitted,

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APPENDIX A

R. S. ART. 3224

No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

* * *

SECTION 21 OF AGRICULTURAL ADJUSTMENT ACT

SEC. 21 (*a*) No suit, action, or proceedings (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (*d*) of this section, may be reserved in the court's order.

(*b*) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regu-

lations of the Secretary with the approval of the President prior to the date of the adoption of this amendment, are hereby legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which have accrued and remain unpaid on the date of the adoption of this amendment shall be assessed and collected pursuant to Section 19, and to the provisions of law made applicable thereby. Nothing in this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary of Agriculture or of the President done or made prior to the date of the adoption of this amendment.

(*c*) The making of rental and benefit payments under this title, prior to the date of the adoption of this amendment, as determined, prescribed, proclaimed and made effective by the proclamations of the Secretary of Agriculture or of the President or by regulations of the Secretary, and the initiation, if formally approved by the Secretary of Agriculture prior to such date of adjustment programs under Section 8 (1) of this title, and the making of agreements with producers prior to such date, and the adoption of other voluntary methods prior to such date, by the Secretary of Agriculture under this title, and rental and benefit payments made pursuant thereto, are hereby legalized and ratified, and the making of all such agreements and payments, the initiation of such programs, and the adoption of all such methods prior to such date are hereby legalized, ratified, and confirmed as fully to all intents and purposes as if each such agreement, program, method, and payment had been specifically author-

ized and made effective and the rate and amount thereof fixed specifically by prior Act of Congress.

(*d*) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considerd by the court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (*a*) or (*c*) of Section 15, Section 16, or Section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of Section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by rea-

son of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be refunded or credited to any person (not a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (*a*) and (*b*) of Section 16, had the tax terminated by proclamation pursuant to the provisions of Section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish to the satisfaction of the Commissioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held

invalid a claim therefor (conforming to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2) no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, or jurisdiction of such courts based upon the amount in controversy.

(*e*) In connection with the establishment, by any claimant, of the facts required to be established in subsection (*d*) of this section, the Commissioner of Internal Revenue is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda, relative to any matter affecting the findings to be made by the Commissioner pursuant to subsection (*d*) of this section, to require the attendance of the claimant or of any officer or employee of the claimant, or the attendance of any other person having knowledge in the premises, and to take, or cause to be taken, his testimony with reference to any such matter, with power to administer oaths to such person or persons. It shall be lawful for the Commissioner, or any collector designated

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by him, to summon witnesses on behalf of the United States or of any claimant to appear before the Commissioner, or before any person designated by him, at a time and place named in the summons, and to produce such books, papers, correspondence, memoranda, or other records as the Commissioner may deem relevant or material, and to give testimony or answer interrogatories, under oath, relating to any matter affecting the findings to be made by the Commissioner pursuant to subsection (*d*) of this section. The provisions of Revised Statutes 3174 and of Revised Statutes 3175 shall be applicable with respect to any summons issued pursuant to the provisions of this subsection. Any witness summoned under this subsection shall be paid, by the party on whose behalf such witness was summoned, the same fees and mileage as are paid witnesses in the courts of the United States. All information obtained by the Commissioner pursuant to this subsection shall be available to the Secretary of Agriculture upon written request therefor. Such information shall be kept confidential by all officers and employees of the Department of Agriculture, and any such officer or employee who violates this requirement shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both, and shall be removed from office.

(*f*) No refund, credit, or abatement shall be made or allowed of the amount of any tax, under Section 15, or Section 17, unless, within one year after the right to such refund, credit, or abatement has accrued, a claim for such refund, credit, or abatement (conforming to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled to such refund, credit, or abatement, except that if the right to any such refund, credit, or abatement accrued prior to the date of the adoption of this amendment, then

such one-year period shall be computed from the date of this amendment. No interest shall be allowed or paid, or included in any judgment, with respect to any such claim for refund or credit.

(*g*) The provisions of Section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax, or any refund or credit authorized by subsection (*a*) or (*c*) of Section 15, Section 16, or Section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of Section 317 of the Tariff Act of 1930.

APPENDIX B

Provisions of Title 26, U. S. C. Dealing With Collection of Taxes By Distraint

Sec. 115. *Lien for Taxes.* (*a*) If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. (Balance of Section deals with recording of lien and giving of releases.) (R. S. Sec. 3186; Mar. 1, 1879, C. 125, Sec. 3, 20 Stat. 331; Mar. 4, 1913, C. 166, 37 Stat. 1016; Feb. 26, 1925, C. 344, 43 Stat. 994; May 29, 1928, 8 a.m., C. 852, Title IV, Sec. 613, 45 Stat.)

116. *Distraint for Taxes.* If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with 5 per centum additional thereto, and interest as aforesaid, by distraint and sale, in the manner hereafter provided, of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid. (Balance of Section deals with exempt property.) (R. S. Sec. 3187; June 2, 1924, 4:01 p.m., C. 234, Sec. 1016, 43 Stat. 343.)

117. *Same; Levy.* In such case of neglect or refusal, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property

and rights to property, except such as are exempt by Section 116 of this title, belonging to such person, or on which the said lien exists, for the payment of the sum due as aforesaid, with interest and penalty for nonpayment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy. (R. S. Sec. 3188.)

118. *Same; Exhibit of Evidences Relating to Property.* All persons, and officers of companies or corporations, are required, on demand of a collector or deputy collector about to distrain or having distrained on any property or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the tax due as aforesaid. (R. S. Sec. 3189.)

119. *Same; Proceedings On.* When distraint is made, as aforesaid, the officer charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the officer making such distraint, shall be left with the owner or possessor or such goods or effects, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded, and the time and place of sale; and the said officer shall forthwith cause a notification to be published in some newspaper within the county wherein said distraint is made, if a newspaper is published in said county, or to be publicly posted at the post office, if there be one within five miles nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Such notice shall specify the articles distrained, and the time and place for the sale thereof. Such time shall not be less than ten nor more than twenty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notice as herein

provided, and the place proposed for the sale shall not be more than five miles distant from the place of making such distraint. Said sale may be adjourned from time to time by said officer, if he deems it advisable, but not for a time to exceed in all thirty days. (R. S. Sec. 3190.)

120. *Same; Sale of Property Subject to Tax.* When property subject to tax, but upon which the tax has not been paid, is seized upon distraint and sold, the amount of such tax shall, after deducting the expenses of such sale, be first appropriated out of the proceeds thereof to the payment of the tax. And if no assessment of such tax has been made upon such property, the collector shall make a return thereof in the form required by law, and the Commissioner of Internal Revenue shall assess the tax thereon. (R. S. Sec. 3191.)

121. *Same; Sale of Property; Purchase for United States.* When any personal property is advertised for sale under distraint as aforesaid, the officer making the seizure shall proceed to sell such property at a public auction, offering the same at a minimum price, including the expenses of making the levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the officer conducting the sale may declare the same to be purchased by him for the United States. The property so purchased may be sold by the collector within whose district the sale was made under such regulations as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. The collector shall render to the Commissioner a distinct account of all charges incurred in such sales, and, in case of resale, shall pay into the Treasury the proceeds as provided in Section 3210 of the Revised Statutes, as amended (R. S. 3192, as amended May 10, 1934, 11:40 a.m., C. 277, Sec. 508, 48 Stat.)

122. *Same; Restoration of Property on Payment Before Sale.* (This merely provides for return of property distrained upon if tax is paid prior to sale.) (R. S. 3193.)

123. *Same; Effect of Certificate of Sale.* In all cases of sale, as aforesaid, the certificate of such sale shall be prima-facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale, and shall transfer to the purchaser all right, title, and interest of such delinquent in and to the property sold; and where such property consists of stocks, said certificate shall be notice, when received, to any corporation, company, or association of said transfer, and shall be authority to such corporation, company, or association to record the same on their books and records in the same manner as if transferred or assigned by the party holding the same, in lieu of any original or prior certificates, which shall be void, whether canceled or not. And said certificates, where the subject of sale is securities or other evidences of debt, shall be good and valid receipts to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt. (R. S. Sec. 3194.)

124. *Same; When Property Not Divisible.* (This deals with special case of indivisible property and allows sale of the whole even though its value exceeds amount of the tax. (R. S. Sec. 3195; June 2, 1924, 4:01 p.m., C. 234, Sec. 1031 (*a*), 43 Stat. 351; re-enacted Jan. 26, 1926, 10:25 a.m., C. 27, Title XI, Sec. 1128(a), 144 Stat. 124.)

125. *Real Estate; Sale to Satisfy Taxes.* When goods, chattels, or effects sufficient to satisfy the taxes imposed upon any person are not found by the collector or deputy collector, he is authorized to collect the same by seizure and sale of real estate. (R. S. Sec. 3196.)

126. *Same; Proceedings.* The officer making the seizure mentioned in Section 125 of this title shall give notice to the person whose estate it is proposed to sell by giving him in hand, or leaving at his last or usual place of abode, if he has any such within the collection district where said estate is situated, a notice, in writing, stating what particular estate is to be sold, describing the same with reasonable certainty, and the time when and place where said officer proposes to sell the same; which time shall not be less than twenty nor more than forty days from the time of giving said notice. The said officer shall also cause a notification to the same effect to be published in some newspaper within the county where such seizure is made, if any such there be, and shall also cause a like notice to be posted at the postoffice nearest to the estate seized, and in two other public places within the county; and the place of said sale shall not be more than five miles distant from the estate seized, except by special order of the Commissioner of Internal Revenue. At the time and place appointed, the officer making such seizure shall proceed to sell the said estate at public auction, offering the same at a minimum price, including the expense of making such levy, and all charges for advertising and an officer's fee of $10. (Balance of section deals with details of conducting sale.) (R. S. Sec. 3197; Feb. 27, 1877, C. 69, Sec. 1, 19 Stat. 248; Mar. 1, 1879, C. 125, Sec. 3, 20 Stat. 331; May 28, 1896, C. 252, 29 Stat. 179; Mar. 3, 1905, C. 1483, Sec. 1, 33 Stat. 1207; July 19, 1919, C. 24, Sec. 1, 41 Stat. 209.)

127. *Same; Certificate of Purchase; Deed.* (This provides for execution of deed by the collector to the purchaser.) (R. S. Sec. 3198.)

128. *Same; Deed Prima-Facie Evidence.* The deed of sale given in pursuance of Section 127 of this title shall be prima-facie evidence of the facts therein stated; and if the proceedings of the officer as set

forth have been substantially in accordance with the provisions of law, shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real estate thus sold at the time the lien of the United States attached thereto. (R. S. Sec. 3199.)

129. *Same; Place of Seizure (and Sale).* Any collector or deputy collector may, for the collection of taxes imposed upon any person, and committed to him for collection, seize and sell any of the property, real or personal (except property exempt from distraint and sale, under Section 3187 of the Revised Statutes, or any right or interest therein, of such person situated in any other collection district within the State in which such officer resides, notwithstanding the provisions of Section 3209 of the Revised Statutes; and his proceedings in relation thereto shall have the same effect as if the same were had in his proper collection district. (R. S. Sec. 3200; amended Jan. 26, 1926, 11:25 a.m., Title XI, Sec. 1129, 44 Stat. 125.)

130. *Same; Redemption Prior to Sale.* (This provides for return of property seized on payment of tax.) (R. S. Sec. 3201.)

131. *Same; Redemption After Sale.* (This provides for redemption after sale by payment to purchaser, within one year after the sale, of the purchase price with interest at 20% per annum.) (R. S. 3202.)

APPENDIX C

PENALTY PROVISIONS

SECTION 19(b) of the Agricultural Adjustment Act:

> "SEC 19. * * * (*b*) All provisions of law, including penalties, applicable with respect to the taxes imposed by Section 600 of the Revenue Act of 1926, and the provisions of Section 626 of the Revenue Act of 1932, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable in respect of taxes imposed by this title: * * * ."

SECTION 1114 of 1926 Revenue Act, applicable with respect to taxes imposed by Section 600 of that Act:

> "SEC. 1114. (*a*) Any person required under this Act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act, who wilfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisioned for not more than one year, or both, together with the costs of prosecution.
>
> "(*b*) Any person required under this Act to collect, account for and pay over any tax imposed by this Act, who willfully fails to collect or truthfully account for and pay over such tax,

and any person who willfully attempts in any manner to evade or defeat any tax imposed by this Act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

"(c) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal-revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

"(d) Any person who willfully fails to pay, collect, or truthfully account for and pay over, any tax imposed by Titles IV, V, VI, VII, VIII, and IX, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of Section 3176 of the Revised Statutes, as amended, or for any offense for which a penalty has been recovered under Section 3256 of the Revised Statutes.

"(*e*) Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

"(*f*) The term 'person' as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs."

APPENDIX D

PROCESSING TAX PROVISIONS OF AGRICULTURAL ADJUSTMENT ACT, AS AMENDED, AS APPLIED TO RICE

SEC. 9. (*a*) To obtain revenue for extraordinary expenses incurred by reason of the national economic emergency, there shall be levied processing taxes as hereinafter provided. When the Secretary of Agriculture determines that any one or more payments authorized to be made under Section 8 are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation; except that * * * (2) in the case of rice, the Secretary of Agriculture shall, before April 1, 1935, proclaim that rental or benefit payments are to be made with respect thereto, and the processing tax shall be in effect on and after April 1, 1935. * * * In the case of rice, the period from August 1 to July 31, both inclusive, shall be considered to be the marketing year. The processing tax shall be levied, assessed, and collected upon the first domestic processing of the commodity, whether of domestic production or imported, and shall be paid by the processor. The rate of tax shall conform to the requirements of subsection (*b*). Such rate shall be determined by the Secretary of Agriculture as of the date the tax first takes effect, and the rate so determined shall, at such intervals as the Secretary finds necessary to effectuate the declared policy, be adjusted by him to conform to such requirements. The processing tax shall terminate at the end of the marketing year current at the time the Secretary proclaims that all payments authorized under Section 8 which are in effect are to be discontinued with

respect to such commodity. The marketing year for each commodity shall be ascertained and prescribed by regulations of the Secretary of Agriculture: * * *

(*b*) (1) The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, plus such percentage of such difference, not to exceed 20 per centum, as the Secretary of Agriculture may determine will result in the collection, in any marketing year with respect to which such rate of tax may be in effect pursuant to the provisions of this title, of an amount of tax equal to (A) the amount of credits or refunds which he estimates will be allowed or made during such period pursuant to section 15(c) with respect to the commodity (B) the amount of tax which he estimates would have been collected during such period upon all processing of such commodity which are exempt from tax by reason of the fact that such processings are done by or for a State, or a political subdivision or an institution thereof, had such processings been subject to tax. If, prior to the time the tax takes effect, or at any time thereafter, the Secretary has reason to believe that the tax at such rate, or at the then existing rate, on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, will cause or is causing such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depression of the farm price of the commodity, then the Secretary shall cause an appropriate investigation to be made, and afford due notice and opportunity for hearing to interested parties. If thereupon the Secretary determines and proclaims that any such result will oc-

cur or is occurring, then the processing tax on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be at such lower rate or rates as he determines and proclaims will prevent such accumulation of surplus stocks and depression of the farm price of the commodity, and the tax shall remain during its effective period at such lower rate until the Secretary, after due notice and opportunity for hearing to interested parties, determines and proclaims that an increase in the rate of such tax will not cause such accumulation of surplus stocks or depression of the farm price of the commodity. Thereafter the processing tax shall be at the highest rate which the Secretary determines will not cause such accumulation of surplus stocks or depression of the farm price of the commodity, but it shall not be higher than the rate provided in the first sentence of this paragraph. * * *

SPECIFIC TAX RATE—RICE

(3) For the period from April 1, 1935, to July 31, 1936, both inclusive, the processing tax with respect to rice shall be levied, assessed, collected, and paid at the rate of 1 cent per pound of rough rice. * * *

(6) (A) Any rate of tax which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6) on the processing of any commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be decreased (including a decrease to zero) in accordance with the formulae, standards, and requirements of paragraph (1) of

this subsection, in order to prevent such reduction in the quantity of such commodity or the products thereof domestically consumed as will result in the accumulation of surplus stocks of such commodity or the products thereof or in the depression of the farm price of the commodity, and shall thereafter be increased in accordance with the provisions of paragraph (1) of this subsection but subject to the provisions of subdivision (B) of this paragraph (6).

(B) If the average farm price of any commodity, the rate of tax on the processing of which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or is established pursuant to this paragraph (6), during any period of twelve successive months ending after July 1, 1935, consisting of the first ten months of any marketing year and the last two months of the preceding marketing year—

(*i*) is equal to, or exceeds by 10 per centum or less, the fair exchange value thereof, or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 20 per centum of the fair exchange value thereof.

(*ii*) exceeds by more than 10 per centum, but not more than 20 per centum, the fair exchange value thereof, the rate of such tax shall subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 15 per centum of the fair exchange value thereof.

(*iii*) exceeds by more than 20 per centum the fair exchange value thereof, the rate of such

tax shall (subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 10 per centum of the fair exchange value thereof.

(C) Any rate of tax which has been adjusted pursuant to this paragraph (6) shall remain at such adjusted rate unless further adjusted or terminated pursuant to this paragraph (6), until December 31, 1937, or until July 31, 1936, in the case of rice.

(D) In accordance with the formulae, standards, and requirements prescribed in this title, any rate of tax prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6) shall be increased.

(E) Any tax, the rate of which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6), shall terminate pursuant to proclamation as provided in section 9 (a) of this title or pursuant to section 13 of this title. Any such tax with respect to any basic commodity which terminates pursuant to proclamation as provided in section 9 (a) of this title shall again become effective at the rate prescribed in paragraph (2), (3), (4) or (5) of this subsection, subject however, to the provisions of subdivisions (A) and (B) of this paragraph (6), from the beginning of the marketing year for such commodity next following the date of a new proclamation by the Secretary as provided in section 9 (a) of this title, if such marketing year begins prior to December 31, 1937, or prior to July 31, 1936, in the case of rice, and shall remain at such rate until altered or terminated pursuant to the provisions of section 9 or terminated pursuant to section 13 of this title. * * *

(G) If the applicability to any person or circumstances of any tax, the rate of which is fixed in pursuance of this paragraph (6), is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be levied, assessed, collected, and paid (in lieu of all rates of tax fixed in pursuance of this paragraph (6) with respect to all tax liabilities incurred under this title on or after the effective date of each of the rates of tax fixed in pursuance of this paragraph (6)), rates of tax fixed under paragraph (2), (3), (4) or (5), and such rates shall be in effect (unless the particular tax is terminated pursuant to proclamation, as provided in section 9 (a) or pursuant to section (13) until altered by Act of Congress; except that, for any period prior to the effective date of such holding of invalidity, the amount of tax which represents the difference between the tax at the rate fixed in pursuance of this paragraph (6) and the tax at the rate fixed under paragraphs (2), (3), (4) and (5) shall not be levied, assessed, collected, or paid.

RICE—SPECIAL RULE

(7) In the case of rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to a processor, except that, where the producer processes his own rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to the place of processing. * * *

(*c*) For the purposes of part 2 of this title, the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period

specified in section 2; and, in the case of all commodities where the base period is the pre-war period, August 1909 to July 1914, will also reflect interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during said base period; and the current average farm price and the fair exchange value shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture. The rate of tax upon the processing of any commodity, in effect on the date on which this amendment is adopted, shall not be affected by the adoption of this amendment and shall not be required to be adjusted or altered, unless the Secretary of Agriculture finds that it is necessary to adjust or alter any such rate pursuant to section 9 (a) of this title.

(*d*) As used in part 2 of this title— * * *

(7) In the case of rice—

(A) The term "rough rice" means rice in that condition which is usual and customary when delivered by the producer to a processor.

(B) The term "processing" means the cleaning, shelling, milling (including custom milling for toll as well as commercial milling), grinding, rolling, or other processing (except grinding or cracking by or for the producer thereof for feed for his own livestock, cleaning by or directly for a producer for seed purposes, and drying) of rough rice; and in the case of rough rice with respect to which a tax-payment warrant has been previously issued or applied for by application then pending, the term "processing" means any one of the above mentioned processings or any preparation or handling in connection with the sale or other disposition thereof.

(C) The term "co-operating producer" means

any person (including any share-tenant or share-cropper) whom the Secretary of Agriculture finds to be willing to participate in the 1935 production-adjustment program for rice.

(D) The term "processor," as used in subsection (b-1) of section 15 of this title, means any person (including a co-operative association of producers) engaged in the processing of rice on a commercial basis (including custom milling for toll as well as commercial milling).

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Supreme Court of the United States

OCTOBER TERM, 1935

No. 585

LEVY RICE MILLING CO., INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND SUPPORTING BRIEF THEREON.

M. B. REDMANN,
Attorney for Petitioner.
New Orleans, La.

MERRICK, SCHWARZ, GUSTE, BARNET & REDMANN,
New Orleans, La.

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R. S. §3224 ..... 17, 18, 19, 20, 21, 31, 37
United States Code, Title 26, Secs. 115-131 ..... 18, 19, 36
United States Code, Title 28, Sec. 347 16

No.....

IN THE

Supreme Court of the United States

LEVY RICE MILLING COMPANY, INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

PETITION OF LEVY RICE MILLING COMPANY, INC., FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

MAY IT PLEASE THE COURT:

The Petitioner, Levy Rice Milling Company., Inc., respectfully prays for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, to hear this cause prior to its decision by the Circuit Court of Appeals and to review the decision of the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, entered in this cause on October 28, 1935, and further to review the decision of the Circuit Court of Appeals in denying

the application of petitioner for a preliminary injunction pending the appeal of said cause in said Circuit Court of Appeals. Petitioner respectfully shows this Honorable Court:

1.

Questions Presented.

(*a*) Is the so-called Agricultural Adjustment Act, as amended on August 24, 1935, constitutional?

(*b*) Does Section 21(d) of said Act deprive petitioner of an adequate remedy at law?

(*c*) Does Article 3224 R. S. or Section 21(a) of said Act forbid the granting of an injunction when petitioner has no adequate remedy at law?

(*d*) If Section 21(a) of said Act forbids an injunction in a case where petitioner has no adequate remedy at law, is said Section 21(a) constitutional?

(*e*) If Congress may constitutionally deprive the Courts of jurisdiction to enjoin the collection of illegal taxes and at the same time deprive the taxpayer of any legal remedy to recover such illegal taxes, may the summary proceedings provided in Sections 115 to 131, Title 26, U. S. C., as amended, be constitutionally employed for the collection of such illegal taxes?

2.

Summary Statement of the Matter Involved.

Petitioner owns and operates a rice mill at New Orleans, Louisiana. Under the Act of the 73rd

Congress, P. L. No. 10, approved on May 12, 1933, as amended, known as the Agricultural Adjustment Act, there is imposed a processing tax of 1c per pound upon the first processing or milling of rough rice. The amount of tax shown to be due by petitioner in its return filed for the month of September, 1935, was $17,721.23. This tax was due and payable to respondent on October 30, 1935. October 28, 1935, petitioner filed its bill in the District Court to restrain the collection of this tax and any tax which might become due in subsequent months on the ground that said tax was unconstitutional, that petitioner was without adequate remedy at law, and that without such injunction it would be irreparably damaged. (R. 42.) Respondent filed a motion to dismiss on the ground that the Court had been deprived of jurisdiction by Art. 3224, U. S. R. S., and Section 21(a) of the Agricultural Adjustment Act. (R. 54.) Seven similar suits were consolidated with this by Court order (R. 58) and the Court heard at the same time petitioner's motion for a preliminary injunction and respondent's motion to dismiss for want of jurisdiction. At the hearing petitioner introduced two affidavits in support of its allegation that, due to the peculiar nature of the rice business, it was impossible to accurately determine the profit or loss resulting from the processing and sale of any given lot of rice. (R. 60, 66.) The affidavits further showed that it is impossible to prove what part, if any, of the processing tax is passed forward to the consumer or back to the producer or what part is borne by the miller. Respondent intro-

duced the joint affidavit of three deputy Internal Revenue Collectors which affidavit was inconsistent with the affidavits of petitioner in only one respect. (R. 39 ~~75~~.) At the conclusion of the hearing the Court denied petitioner's motion for a preliminary injunction and granted respondent's motion to dismiss upon the ground that the Court was deprived of jurisdiction by Article 3224, U. S. R. S., and Section 21(a) of said Act. (R. 37 ~~73~~.) Said Article 3224* and Section 21(a)* forbid the granting of an injunction to restrain the collection of any tax, and of the processing tax here involved, respectively. Under Section 21(d)* of said Agricultural Adjustment Act it is provided that no tax collected under the Act may be recovered except upon proof satisfactory to the Commissioner of Internal Revenue that the payer of the tax had not, directly or indirectly, included such amount in the price of the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee of the commodity, and that the price paid by the taxpayer for the unprocessed commodity was not reduced by any part of such amount. The bill below, and supporting affidavits, show the manner in which rough rice is milled and the manner in which it is sold, and that from any given lot of rough rice many different grades and qualities of clean rice are produced. The usual and customary method of selling rice is to sell it on samples made up of mixtures of different lots of clean rice which in turn are derived from differ-

*Set out in Appendix to Brief.

ent lots of rough rice purchased from different parties, and when an order for clean rice is received, based on any particular sample, the miller fills the order of clean rice from a mixture from various lots of clean rice. Many sales are made during a given season made up of various mixtures of clean rice, and there is practically an unlimited combination of lots of clean rice that go into the various sales. There is no way of accurately allocating to the various lots of rice going into any given mix any definite part of the price received for the entire mix. (R. ~~15~~-21.) Petitioner's sworn bill and affidavits showed that for these reasons it is impossible for petitioner or any other rice miller to make the proof required for recovery of the tax paid, if the law be held unconstitutional, even if it were otherwise possible to make such proof. Petitioner's sworn bill alleged that unless the injunction prayed for was granted: (1) It would be without adequate remedy at law to recover the taxes paid in the event they be held unconstitutional; (2) if any legal remedy existed, it would entail a multiplicity of suits; ~~(3) it would become subject to heavy civil and criminal penalties~~ and (3) ~~4~~ it would suffer great and irreparable damages for specific reasons set out. (R. ~~15~~ 10, ~~16, 23~~ 4.) Respondent filed no answer denying any of these allegations. Petitioner alleged below that the said Section 21(d) did not apply to its suit because petitioner had no adequate remedy at law. It alleged further that, if said section be interpreted as prohibiting the injunction prayed for, the said

section, together with the other provisions of the Act, violated the Fifth Amendment to the Constitution in that said unconstitutional taxes would be collected from petitioner and petitioner would have no remedy by which it could recover said taxes, if they were unlawful, and thereby petitioner would be deprived of the right to test the constitutionality of the taxes. (R. 23.) ~~Petitioner offered to give such security as the Court might require if the injunction were granted. (R. 24.)~~ There was neither pleading nor proof that the granting of the injunction would in any wise injure respondent if the tax were ultimately held constitutional.

On October 29, 1935, petitioner was allowed an appeal. (R. 31.) On the same day petitioner applied for, and was denied, an injunction pending appeal. (R. 30.) The record was duly filed in the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, on November 4, 1935, being Cause No. 7949 on the docket of that Court. On November 5, 1935, petitioner applied to said Circuit Court of Appeals for an injunction against the respondent pending the hearing of its appeal (R. 37), but the Circuit Court of Appeals on November 5, 1935, denied the application. (R. 38.)

3.

Reasons Relied Upon for the Allowance of the Writ.

This case, with its companion cases, presents an entirely unprecedented situation. It presents questions of gravity and importance. It involves the

constitutionality of an important Federal statute and the rulings of the Court below, insofar as they may be taken to have held the statute constitutional, are probably in conflict with the decisions of this Court in *Loan Association v. Topeka* (1874), 20 Wall. 655; *Child Labor Tax Case* (1922), 259 U. S. 20; *Hill v. Wallace* (1922), 259 U. S. 44; *Hammer v. Dagenhart* (1918), 247 U. S. 251; and *Schechter Poultry Corporation v. United States* (1935), 295 U. S. 495; and contrary to the decision of the United States Circuit Court of Appeals for the Second Circuit in *Butler et al. v. United States* (1935), 78 Fed. (2nd) 1. The District Court and the Circuit Court of Appeals in holding that Congress may constitutionally forbid the granting of an injunction against summary collection of taxes, while at the same time depriving the taxpayer of any adequate remedy at law, presents a constitutional question of great importance never decided by this Court and a question which should be definitely decided. Though this question has never been *directly* decided by this Court, the decisions of the Courts below probably conflict with the decisions of this Honorable Court in *Truax v. Corrigan* (1921), 257 U. S. 312; *Brinkerhoff-Faris Trust & Savings Company v. Hill* (1930), 281 U. S. 673, and inferentially *Graham & Foster v. Goodcell* (1931), 282 U. S. 409, 430, 431; *Michaelson v. United States* (1924), 266 U. S. 42, 64, 65, 66, and *Phillips v. Commissioner* (1931), 283 U. S. 589, 596. This holding was particularly erroneous when the respondent was, at the same time,

authorized to collect the tax by summary proceedings under Sections 115 to 131, Title 26, U. S. C., as amended.

In holding that Article 3224, U. S. R. S., and Section 21(a) of said Act deprive the courts of jurisdiction to grant an injunction under the unusual and extraordinary circumstances of this case, the courts below decided an important question of Federal law in a way probably in conflict with the decisions of this Honorable Court in *Hill v. Wallace* (1922), 259 U. S. 44, and *Miller, Collector, v. Standard Nut Margarine Company* (1932), 284 U. S. 498, and in conflict with the unreported decisions of the Second, Sixth, Eighth, Ninth and Tenth Circuit Courts of Appeals, which granted injunctions pending appeal in cases similar to the present case.

The District Court, in refusing to grant petitioner's motion for a preliminary injunction, and in refusing to grant petitioner's motion for an injunction pending appeal, and the Circuit Court of Appeals in refusing to grant petitioner's motion for an injunction pending appeal, have so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Honorable Court's power of supervision and this action of the courts below is probably in conflict with the decision of this Honorable Court in *Ohio Oil Company v. Conway* (1929), 279 U. S. 813, and is in conflict with the holdings of every other Circuit Court of Appeals which has passed upon this question, to wit, the Circuit Courts of Appeals for the Second, Sixth, Eighth, Ninth and Tenth Circuits.

4.

Reasons Relied Upon for the Allowance of Writ Before Action on the Merits by the Circuit Court of Appeals.

This case, with its companion cases, presents a situation unparalleled in American history. Under the provisions of Sections 115 to 131, Title 26, U. S. C., as amended, the respondent is armed with weapons for the immediate forcible collection of the tax from petitioner, and those similarly situated, which they are powerless to resist. The District Court and Circuit Court of Appeals below have, contrary to the decisions of all other Circuit Courts of Appeals passing upon the question, held themselves deprived of any jurisdiction whatsoever to grant petitioner any relief. In the ordinary course of events it will be six or seven months before petitioner's appeal to the Circuit Court of Appeals will be heard on the merits. Meanwhile, through collection of the tax the subject-matter of the appeal may be destroyed, and the case become moot before a hearing may be had in the Circuit Court of Appeals. In addition, the order of the court below, though apparently an interlocutory order, has the effect of finally disposing of the appeal on the merits. The questions involved are of great national importance, and deserve the prompt consideration of this Honorable Court. This petition raises important questions of constitutional law not raised by any other petition now before this Court, and particularly it raises the question whether the provisions of Sections 115 to 131, Title 26, U. S. C., as

amended, are constitutional, if it be held that Congress may constitutionally deprive a taxpayer of all adequate remedy at law to recover taxes illegally collected while at the same time forbidding the granting of an injunction to restrain their collection. Hundreds of similar suits throughout the country involve this question, as well as the others herein raised, and the situation thus presented is so unusual and unprecedented as to justify this Honorable Court in requiring the record below to be certified to it forthwith for decision.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari may issue out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Fifth Circuit commanding said court to certify and send to this Court, on a day certain, to be therein designated, a full and complete Transcript of the Record and all of the proceedings in the Circuit Court of Appeals in said cause entitled Levy Rice Milling Co., Inc., Appellant, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Appellee, No. 7949 on its docket, to the end that said cause may be reviewed and determined by this Court as provided by Section 240 of the Judicial Code, as amended, and that your petitioner may have such other and further relief or remedy in the premises as this Court may deem appropriate and in conformity with said provisions of the Judicial Code, and that said judgment of the

District Court be reversed by this Honorable Court and such relief granted as is appropriate to the cause.

LEVY RICE MILLING COMPANY, INC.,

By Ralph J. Schwarz,
M. B. REDMANN,
Attorneys for Petitioner.

Of Counsel,
MERRICK, SCHWARZ, GUSTE, BARNETT & REDMANN,
New Orleans, La.

No.....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

LEVY RICE MILLING COMPANY, INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

The Opinions of the Courts Below.

The District Court wrote no opinion and the Circuit Court of Appeals has not yet rendered any decision on the merits of the appeal. The *per curiam* opinion of the Court denying the injunction pending appeal is found on page ~~98~~ 55 of the record.

II.

Jurisdiction.

(1) Jurisdiction of this cause is conferred upon this Honorable Court by *Judicial Code, Section* 240, *as amended; United States Code, Title* 28, *Section* 347.

(2) The date of the judgment of the Trial Court to be reviewed is October 28, 1935 (R. ~~79~~ 37), the date of the order of the Circuit Court of Appeals denying the injunction pending appeal sought to be reviewed is November 5, 1935. (R. ~~88~~ 55.)

(3) The power of this Honorable Court to review the case prior to a disposition of it by the Circuit Court of Appeals and to review the action of the Circuit Court of Appeals in refusing to grant an interlocutory order to preserve the *status quo* is sustained by the following, among other, cases:

The Three Friends (1897), 166 U. S. 1, 49.
Denver v. New York Trust Company (1913), 229 U. S. 123, 133.
Harriman v. Northern Securities Company (1905), 197 U. S. 244, 286.
American Construction Company v. Jacksonville Railway (1893), 148 U. S. 372, 384.
Forsyth v. Hammon (1897), 166 U. S. 506, 513.
In re Chetwood (1897), 165 U. S. 443, 462.
McClellan v. Carland (1910), 217 U. S. 268, 277.
Hanover Star Milling Company v. Metcalf (1916), 240 U. S. 403, 408.
Gay v. Ruff (1934), 292 U. S. 25, 30.

III.

Statement of the Case.

A full statement of the case has been given under heading 2 in the petition and in the interest of brevity the statement is not repeated at this point.

IV.

Specification of Errors.

(1) The District Court erred in holding that it was without jurisdiction to hear petitioner's cause because of the provisions of R. S. Sec. 3224, and Sec. 21(a) of the Agricultural Adjustment Act, as amended.

(2) The District Court erred in refusing to grant petitioner a preliminary injunction pending a hearing on the merits.

(3) The District Court and Circuit Court of Appeals erred in holding that said Sec. 21(a) did not deprive petitioner of its property without due process of law contrary to the Fifth Amendment to the Constitution of the United States, in view of the allegations in the bill, admitted by the motion to dismiss, that petitioner was without remedy at law to recover the taxes paid if they were held to be illegal.

(4) The District Court and the Circuit Court of Appeals erred in holding that if said Sec. 21(a) forbade the granting of an injunction restraining the collection of the tax, and if petitioner had no remedy at law to recover the same, if it be held they were illegally collected, respondent could neverthe-

less employ the summary proceedings for immediate collection of the tax provided in Sections 115 to 131, Title 26, U. S. C., as amended, without depriving petitioner of its property without due process of law contrary to the Fifth Amendment to the Constitution of the United States.

(5) The District Court and the Circuit Court erred in holding that either or both R. S. §3224, and Sec. 21(a) of said Act prevented the granting of an injunction under the special and extraordinary circumstances presented by this case.

(6) The Circuit Court of Appeals erred in holding that petitioner had "a remedy at law to recover back any taxes illegally exacted."

(7) The Circuit Court of Appeals erred in refusing to grant petitioner an injunction to preserve the *status quo* pending its appeal from the order dismissing the bill.

(8) The Circuit Court of Appeals erred in refusing to grant petitioner an injunction pending the appeal for the purpose of preserving the appellate jurisdiction of that Court.

(9) The Circuit Court of Appeals erred in holding either or both R. S. §3224, and Sec. 21(a) of said Act "deprived the Court of jurisdiction to grant injunctive relief."

(10) The District Court and Circuit Court of Appeals erred in not holding the Agricultural Adjustment Act, as amended, to be violative of Art. 1, Sec. 1, Amendments Five and Ten of the Constitution of the United States.

Petitioner expects to rely on all of the foregoing specifications of error.

V.

ARGUMENT

Summary of the Argument.

Point A

Neither R. S. §3224, nor Sec. 21(a) of the Agricultural Adjustment Act, properly interpreted, bars injunctive relief in this case.

Point B

Sec. 21(d) of the Agricultural Adjustment Act deprives petitioner of any adequate remedy at law.

Point C

If R. S. §3224, and Sec. 21(a) of the Agricultural Adjustment Act forbid the granting of an injunction in this case, then they are unconstitutional.

Point D

The summary proceedings provided in Sections 115 to 131, Title 26, U. S. C., as amended, are unconstitutional when applied to a taxpayer who has been deprived of both legal and equitable remedies to test the constitutionality of the tax thus sought to be collected.

Point E

The Agricultural Adjustment Act, as amended, is unconstitutional.

Point F

This is a case where certiorari should be granted prior to the final decree by the Circuit Court of Appeals.

Point A

Inapplicability of R. S. §3224 and Section 21(a) of the Agricultural Adjustment Act.

In wording and in effect R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act, as amended, are for all practical purposes identical. For the convenience of the Court the two acts are here set out side by side:

R. S. §3224.	A. A. A. Sec. 21(a).
No suit	No suit, action or proceeding (including probate, administration, receivership, and bankruptcy proceedings)
shall be maintained in any court	shall be brought or maintained in any court
for the purpose of restraining the assessment or collection of any tax.	if such suit, action or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or

> collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment * * *.

This Court has consistently held that despite the apparently unconditional terms of R. S. §3224, injunctions against the collection of a tax may issue in proper cases. The latest expression of the Court on the point is found in *Miller v. Standard Nut Margarine Company* (1932), 284 U. S. 498, 509, where the Court said:

> "The section does not refer specifically to the rule applicable to cases involving exceptional circumstances. The general words employed are not sufficient, and it would require specific language undoubtedly disclosing that purpose, to warrant the inference that Congress intended to abrogate that salutary and well established rule. * * * It has never held the rule to be absolute, but has repeatedly indicated that extraordinary and exceptional circumstances render its provisions inapplicable. * * *
>
> " * * * It requires no elaboration of the facts found to show that the enforcement of the Act against respondent would be arbitrary and oppressive, would destroy its business, ruin it financially and inflict loss for which it would have no remedy at law. It is clear that, by reason of the special and extraordinary facts and circumstances, Sec. 3224 does not apply."

See also Hill v. Wallace (1922), 259 U. S. 44, 62; Dodge v. Osborn, (1916), 240 U. S. 118, 121.

Section 21(a) was included in the amendment to the Act of August 24, 1935, after numerous suits to restrain the collection of the tax had been filed throughout the country in which the contention was made that the supposed tax was in fact no tax at all but a penalty. *e.g., Penn v. Glenn,* 10 Fed. Supp. 483, 484 (April 13, 1935); F. G. Vogt & Sons, Inc. v. Rothensies, 11 Fed. Supp. 225, 230 (July 17, 1935); Armour & Company v. Harrison (not yet reported, District Court, Northern District of Illinois), in which the Court said in connection with R. S. §3224:

> "Merely to call this exaction a tax does not make it a tax. It is not levied for governmental purposes; therefore, it is not a tax. Therefore, the statute has no application to it."

The obvious purpose of Congress in including this section in the amendment was to make certain its intention that the principle of R. S. §3224 should apply to suits brought to restrain collection of these particular taxes. Having expressed its intention in words practically identical with those used in R. S. §3224, the amendment must be interpreted in the light of the well settled rule that, when a statute is reenacted in the same words as a previous statute which has received a judicial interpretation, the re-enacted statute includes the previous judicial interpretation. Louisville Cement Co. v. Interstate Commerce Commission (1918), 246 U. S. 638, 644.

Further it must be interpreted in the light of the

rule that a statute, susceptible of two constructions, should be construed in such a way as not to raise doubts as to its constitutionality. *Panama R. R. Co. v. Johnson* (1924), 264 U. S. 375; *Michaelson v. United States* (1924), 266 U. S. 42. As will be pointed out hereafter, to interpret this statute in the manner in which it has been interpreted below would raise grave doubts as to its constitutionality.

Interpreting these statutes as not forbidding injunctive relief in *all* cases we may pass to a discussion of whether extraordinary and exceptional circumstances exist in this case such as would render them inapplicable.

Point B

Section 21(d) of the Agricutural Adjustment Act Deprives Petitioner of Its Remedy at Law.

Section 21(d)* forbids the return of any taxes illegally collected under the Act unless the taxpayer proves, to the satisfaction of the Commissioner, that neither the taxpayer nor any person directly or indirectly under his control has, directly or indirectly, included the amount of the tax or any part thereof in the price of the commodity with respect to which it was imposed, or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner or included any part of such amount in the charge or fee

*Printed in the appendix.

for processing, and that the price paid by the taxpayer for the commodity was not reduced by any part of the tax paid. This, obviously, was an attempt to enact into law the economic theory that the burden of any tax imposed upon a manufacturer or processor is ultimately passed on to others. In speaking of a sales tax, Mr. Justice Stone and Mr. Justice Brandeis, dissenting in *Indian Motorcycle Company v. U. S.* (1931), 283 U. S. 570, 581, said:

> "In the Panhandle Oil Case, it was held that this shifting of the burden of a State tax from the seller to the buyer was sufficient to render the tax invalid where the buyer was an agency of the United States, and it was assumed that the burden of the sales tax involved was so inevitably passed on to the buyer as to require this result. With this assumption economists would not, I believe, generally agree. Many hold that whether the burden of any tax paid by the seller is actually passed on to the buyer depends upon considerations so various and complex as to preclude the assumption *a priori* that any particular tax at any particular time is passed on. In some conditions of the market, the burden remains with the seller, or even may be shifted back from the seller to the producer by the reduction of the producer's price, rather than forward to the consumer by an increase of the seller's price."

Likewise Mr. Justice Holmes speaking for the full Court in *Lash's Products Company v. U. S.* (1929), 278 U. S. 175, 176, said:

> "The phrase 'passed the tax on' is inaccurate, as obviously the tax is laid and remains on the

> manufacturer and on him alone. Heckman & Co. v. I. S. Dawes & Son Co., 12 F. (2d) 154. The purchaser does not pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all."

A sales tax is of course easily identifiable, or capable of identification, because levied on the sale of a given identifiable object and based upon the price at which the object is sold. If the question of whether such a tax has been "passed on" is so debatable, how much more so must be the case of a tax, such as a processing tax, which is carried as a part of the processor's expenses of operation? Even more complicated is the situation when, as here, the price paid to the producer and by the consumer fluctuates from day to day on competitive markets influenced by complex and manifold economic factors. However, whatever the merits of the theory *qua* theory, there can be no question that in order to make *factual proof* as to whether a processing tax has been "passed on" it must be shown that the price to the vendee has been increased *because* of the tax, or that the price paid to the producer has been reduced *because* of the tax. When a commodity, such as rice, is bought and sold on competitive markets such proof can be made only by proving what the market *would have been* had there been no tax. This Court held in *International Harvester Company v. Kentucky* (1914), 234 U. S. 216, 223, that the determination of what the market price of a given article would have been under different cir-

cumstances "is a problem that no human ingenuity could solve," and that:

> "The reason is not the general uncertainties of a jury trial but that the elements necessary to determine the imaginary ideal are uncertain both in nature and degree of effect to the acutest commercial mind. The very community, the intensity of whose wish relatively to its other competing desires determines the price that it would give, has to be supposed differently organized and subject to other influences than those under which it acts. * * *
>
> " * * * To compel them to guess on peril of indictment what the community would have given for them if the continually changing conditions were other than they are, to an uncertain extent; to divine prophetically what the reaction of only partially determinate facts would be upon the imaginations and desires of purchasers, is to exact gifts that mankind does not possess."

The situation involved in this case is many times more complex than that in the case just referred to. The manner in which the rice milling business is conducted is too complicated to set out in the confines of this brief but is fully set out in the petition and affidavits in support thereof. (R. 16-21, 60-75.) Because of the manner in which the rice milling business is, and must be, conducted it is impossible for a miller to tell accurately whether he has made a profit or loss with respect to the purchase, milling, and sale of a given lot of rough rice. (R. 32.) He can make a book figure with regard to any such lot

of rice by the use of averages, estimates, and arbitraries but that is all. He can only tell, at the end of the season, whether he has made a gain or loss on the season's operations. (R. 62.) The processing tax is levied upon each lot of rice based upon its weight at the time it reaches the mill and in order to recover the tax paid on such rice, under the provisions of Sec. 21(d), the miller must prove that he did not "pass on" the tax with respect to that particular lot of rice. Since he cannot even determine whether he made a profit or a loss on the particular transaction, it is manifestly impossible for him to know, much less prove, whether he has passed the tax on. However, even if he were able to prove exactly the amount of profit he made on each transaction, he would still have proved nothing but that. For all that he, or anyone else, could know he might have been able to sell the particular lot of rice for exactly the same price even if there had been no tax and he might have been able to purchase it for exactly the same price had there been no tax. On the face of it such matters are incapable of proof or even a sound guess. The miller cannot control the market on which he buys nor that on which he sells but he is compelled to buy and sell on those markets if he is to stay in the rice milling business. This lack of control of the markets by the miller is illustrated by the fact that the present cost of rough rice, plus operatings costs, including tax, is more than the miller can reasonably expect to get out of the products processed from it on the present market

for clean rice and rice products. (R. 62.) Manifestly under such circumstances no one can know, much less prove, whether the ultimate burden of the tax has fallen on the producer, the miller, or the purchaser. An analogous situation arises where a trademark has been infringed and the question arises as to how much of the sales price received by the infringer is attributable to the use of the trademark and how much to the intrinsic value of the object sold. In *Hamilton Shoe Company v. Wolf Bros.* (1916), 240 U. S. 251, 260, this Court held that in such a case it would, in the very nature of things, be impossible to ascertain to what extent the infringer could have effected sales and at what prices except for the use of the trademark. The same principle is applicable here—it is inherently impossible, in the circumstances of this case, for petitioner, or any other rice miller, to ascertain or prove to what extent he could have "effected sales and at what prices" except for the existence of the processing tax.

More than a thousand suits to enjoin the collection of these taxes have been filed throughout the United States. Insofar as petitioner knows the government has never yet been able to suggest *how* the proof required by the statute can be made. The government has satisfied itself with the simple assertion that proof *can* be made and with citing the opinion of this Court in *United States v. Jefferson Electric Manufacturing Company* (1934), 291 U. S. 386, 402, where the Court said:

"If the taxpayer has borne the burden of the tax, he can readily show it." * * *

The tax involved in that case was a tax upon the *sale* of a definite determinable object and amounted to 5% of the price for which the object was sold. The tax was not upon the manufacture, or the manufacture *and* sale. *Indian Motor Cycle Company v. United States* (1931), 283 U. S. 570, 574. In determining whether the payer of the tax collected it from the vendee or paid it himself there were no such complications as here exist. Indeed it was not suggested by anyone that the required proof could not be made; only that the taxpayer should not have to make it because the tax involved in the suit had been paid prior to the passage of the Act and at a time when it would not have been necessary for the payer to make such proof to procure refund. (P. 401.) The present case came before the Circuit Court of Appeals on a *final judgment dismissing the bill* on motion of the respondent which admitted the allegation that the proof required by the Act was impossible of being made. Nevertheless, and in the face of this, the Circuit Court of Appeals held that petitioner had "a" remedy at law (nothing being said as to the *adequacy* of it). Petitioner asserts that on the face of the Act, considering the *kind* of tax involved, an impossible burden of proof is placed upon petitioner. Petitioner further asserts that even if this were not true the Courts below should have enjoined the collection of the tax until such time as the courts could make a finding upon the

fact question of whether, under the peculiar conditions of the rice milling industry, the proof could be made. Respondent has not denied the allegations of petitioner's bill in this respect and under the circumstances the Court should not have dismissed the bill but was under the plain duty of preserving the *status quo* until such time as the facts upon which petitioner's constitutional rights depended could be fully determined. *cf Ohio Oil Company v. Conway* (1929), 279 U. S. 813.

Besides the lack of any adequate remedy at law this case presents several other grounds for equitable relief which have been held sufficient by this Court for the enjoining of the collection of a tax:

1. Multiplicity of suits (R. 23). *Wilson v. Illinois Southern Railroad* (1924), 263 U. S. 574; *Raymond v. Chicago Union Traction Company* (1907), 207 U. S. 20.

2. Congress has made no appropriation to repay any of these taxes if illegally collected, even if an adequate remedy at law were available, and in view of the tremendous amount involved it is improbable that any such appropriation will be made. (R. 24.) *Stewart Dry Goods Company v. Lewis* (1932), 287 U. S. 9.

3. The statute purporting to give the legal remedy has never been interpreted by the Courts and for this reason, if no other, petitioner's remedy at law cannot be said to be adequate. *Atlantic Coast Line v. Daughton* (1923), 262 U. S. 413. *cf Union Pacific Railroad v. Weld County* (1917), 247 U. S. 282.

4. The existence of the heavy civil and criminal penalties provided by Section 19(b) of the

Act*. (R. 15.) *Ex Parte Young* (1908), 209 U. S. 123, 146; *Wallace v. Hines* (1920), 253 U. S. 66.

Point C

Unconstitutionality of R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act Under the Circumstances of This Case.

The argument is made that the District Courts and Circuit Courts of Appeals, not being constitutional courts, may be completely abolished by Congress and therefore Congress may place any desired restriction on their jurisdiction. The answer to this is that Congress has not abolished the District Courts nor the Circuit Courts of Appeals and not having abolished them the Congress may not constitutionally deprive one class of citizens of the right to equitable relief therein while at the same time and under similar circumstances other taxpayers are permitted to obtain such relief. Persons other than those subject to the processing tax from whom illegal taxes are sought to be collected may enjoin their collection under special and extraordinary circumstances. *Hill v. Wallace, supra; Miller v. Standard Nut Margarine Company, supra.* The right to protect one's property by invoking the aid of courts is as much a property right as the property itself, and to deny one class of citizens this right while granting it to others under similar circumstances

*The applicable penalty provisions are copied in Appendix C hereto.

is to deprive the class so denied of its property without due process of law. In *Truax v. Corrigan* (1921), 257 U. S. 312, which involved an Arizona statute which forbade the issuance of injunctions to protect property rights in cases of labor disputes the contention was made in support of the validity of the statute that the State could have completely abolished the lower courts and therefore the State could put such limitations as it desired upon their jurisdiction. This court nevertheless held the statute violative of the Fourteenth Amendment. Since the validity of exertions by the Federal Government of any of its delegated powers under the Fifth Amendment are to be measured by the same standards by which exertions of State power are measured under the Fourteenth Amendment, *Hamilton v. Kentucky Distilleries Co.* (1919), 251 U. S. 146, 156, it would seem clear that R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act are unconstitutional if they be construed as depriving courts of jurisdiction to issue injunctions to protect property rights in tax cases where the taxpayer is without remedy, or at least adequate remedy, at law.

In *Brinkerhoff-Faris Trust & Savings Company v. Hill* (1930), 281 U. S. 673, the Supreme Court of Missouri held that the trial court properly dismissed a bill seeking to enjoin the illegal assessment and collection of taxes on the ground that the taxpayer should first have pursued remedies before the State Board of Equalization. That court had

previously held that the State Board of Equalization was without jurisdiction to hear such complaints. The effect of the second decision was to deprive the petitioner of all right to test the validity of the tax. This court held that this amounted to a deprivation of petitioner's property without due process of law, Mr. Justice Brandeis saying:

> "Whether acting through its judiciary or through its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it."

This language is exactly applicable to the instant case and seems conclusive that if R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act be construed as forbidding injunctive relief in this case they are unconstitutional. See also *Graham & Foster v. Goodcell* (1931), 282 U. S. 409, 430, 431.

However absolute the power of Congress to destroy the jurisdiction of the inferior Federal Courts may seem, it is no more absolute than the apparent power of the State to arbitrarily exclude a foreign corporation from doing business within its borders. Nevertheless, this court has held, *Fidelity & Deposit Company v. Tafoya* (1926), 270 U. S. 426, that this "most absolute seeming" right was qualified and in some circumstances could become wrong, and that despite this apparently unqualified right the State could not impose an unconstitutional condition upon the foreign corporation coming into the

State. The exercise of Congress's right to limit the equity jurisdiction of the lower Federal Courts in the granting of injunctions in tax cases such as the present would be, as in the case just cited, for the purpose of securing a result forbidden by the Fifth Amendment, i. e., the deprivation of petitioner's property without due process of law, and may not stand.

There is still another reason why these statutes, if construed to absolutely and in all cases forbid injunctions, are unconstitutional. The Constitution, Article III, Section 1, vests the judicial power of the United States in one Supreme Court and such inferior courts as the Congress may from time to time ordain and establish By Section 2 of Article III this judicial power extends to all cases in law and *equity* arising under the Constitution and laws of of the United States. Congress having established the District Courts and the Circuit Courts of Appeals, they, by virtue of the Constitution, at once become vested with judicial power in all cases arising under the Constitution and laws of the United States. These inferior courts derive their *judicial power* from the Constitution and not from any act of Congress. Congress may well have the power to regulate the procedure in these courts and to define their jurisdiction but Congress may not, it is submitted, deprive the courts of their *inherent judicial powers* which naturally follow from the Constitutional grant of those powers. This was expressly held in *Michaelson v. United States*

(1924), 266 U. S. 42, 64, 65, 66, where the court said:

> *"If the statute now under review encroaches upon the equity jurisdiction intended by the Constitution, a grave constitutional question in respect of its validity would be presented;* and it, therefore, becomes our duty, as this Court has frequently said, to construe it 'if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score.' Panama R. R. Co. v. Johnson, 264 U. S. 375.
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> * * *
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> "But it is contended that the statute materially interferes with the inherent power of the courts and is therefore invalid. That the power to punish for contempts is inherent in all courts, has been many times decided and may be regarded as settled law. It is essential to the administration of justice. *The courts of the United States, when called into existence and vested with jurisdiction over any subject, at once become possessed of the power.* So far as the inferior Federal Courts are concerned, however, it is not beyond the authority of Congress (*Ex parte* Robinson, 19 Wall. 505, 510-511; Bessette v. W. B. Conkey Co., 194 U. S. 324, 326); *but the attributes which inhere in that power and are inseparable from it can neither be abrogated nor rendered practically inoperative.* That it may be regulated within limits not precisely defined may not be doubted. The statute now under review is of the latter character."

The power of courts of equity to issue injunctions to protect property rights, which could not otherwise be protected, is quite as inherent as the power

to punish for contempt. Conceding the authority of Congress to regulate or limit the use of the power, to an undefined extent, the case here presents no such situation, for to interpret the acts as depriving the courts of the power to issue injunctions in *every case* involving the collection of the tax, would be to completely destroy one of the inherent powers of the court which it possesses by virtue of Section 2 of Article III of the Constitution. For these reasons petitioner submits that R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act, so construed, are unconstitutional.

Point D

Unconstitutionality of Summary Proceedings for Collection of the Tax.

Under Sections 115 to 131, Title 26, U. S. C., as amended,* which are incorporated into the present Act, the Commissioner is authorized to collect the taxes, upon non-payment, by the fixing of liens on all of petitioner's property or by the levying of distraints against petitioner's property, including bank accounts, etc. The procedure is summary and under the distraint proceedings it would be entirely possible for the Commissioner to collect the full tax alleged to be owed by petitioner before petitioner could even know any proceedings had been started to collect the tax. All that would be necessary would be for the Commissioner or a deputy to walk

*Printed in Appendix B.

to petitioner's bank with the proper papers and distrain petitioner's money there deposited. The constitutionality of this summary procedure was upheld in *Phillips v. Commissioner* (1931), 283 U. S. 589, 596, upon the express ground that under existing statutes the taxpayer was given ample opportunity to ultimately test the liability for the tax in a court of law, the court saying:

> "Where only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, *if the opportunity given for the ultimate judicial determination of the liability is adequate.* Springer v. United States, 102 U. S. 586, 593; Scottish Union & National Ins. Co. v. Bowland, 196 U. S. 611, 631."

Under the facts of this case plaintiff is deprived of all legal remedy to recover the tax collected, if it be held illegal, because of the impossible burden of proof petitioner would have to meet in such a suit and, if R. S. §3224 and Sec. 21(a) be so construed, petitioner is deprived of the right to test the validity of the tax by a suit for an injunction. To permit the government to summarily seize petitioner's property under these circumstances would be to deprive petitioner of his property without due process of law and to argue this further would be to argue the obvious. See, in addition to the case cited, *Lipke v. Lederer* (1922), 259 U. S. 557, 562; *Carpenter v. Shaw* (1930), 280 U. S. 363, 369; *Ward v. Love County* (1920), 253 U. S. 17.

Point E

The Agricultural Adjustment Act, as Amended, Is Unconstitutional.

Petitioner asserts that the Agricultural Adjustment Act, as amended, is unconstitutional for the following reasons:

1. The Act, though in form a revenue measure, is in fact an attempt to regulate the price at which petitioner buys and sells rice in intrastate commerce.

2. The Act is an attempt to control the production of agricultural commodities within the several States.

3. The taxes are not levied for the general welfare or for a public purpose.

4. The Act, as amended, contains an unconstitutional delegation of legislative power to the Secretary of Agriculture.

Section 2(1) of the Act declares the policy of the Act to be "to establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. * * *" The rice miller is still compelled to pay the market price for all rice bought from farmers, and in addition thereto he is compelled to pay $1.62 per barrel

on the rice so purchased, which $1.62 in turn is given to the farmer under the guise of benefit payments. The object is to raise the price to the farmer and that object is obtained in part, at least, by compelling petitioner to pay at least $1.62 per barrel more for his rice than he would otherwise have to pay. Since the purchase is wholly within intrastate commerce, it is unquestionably beyond the power of the Federal Government to control. *Hill v. Wallace* (1922), 259 U. S. 44; *Schechter Poultry Corporation v. United States* (1935), 295 U. S. 495; *Butler v. United States of America* (C. C. A., First, 1935), 78 Fed. (2nd) 1. Congress being without power by direct regulation to fix or control these prices, it cannot achieve the same result by casting a law having that purpose into the form of a revenue measure. *Child Labor Tax Case* (1922), 259 U. S. 20; *Hill v. Wallace, supra; Hammer v. Dagenhart* (1918), 247 U. S. 251.

Secondly, the Act attempts to control and reduce the production of agricultural commodities by farmers within the several States. In Section 8(1) the Secretary of Agriculture is authorized

> "to provide for reduction in the acreage or reduction in the production for market, or both, of any basic agricultural commodity, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith or upon that part of the production of any basic agricultural commodity required for domestic consumption, such amounts as the Secretary deems fair and reasonable." * * *

Of all industries, agriculture is the most essentially intrastate, and this has long been recognized by this Court. *Kidd v. Pearson* (1888), 128 U. S. 1, 21; *Heisler v. Thomas Colliery Company* (1922), 260 U. S. 245, 259; *Industrial Association v. United States* (1925), 268 U. S. 64, 82. Since the Act has for its purpose the regulation of this purely intrastate matter, *Schecter Poultry Corporation v. U. S., supra; Hill v. Wallace, supra,* the tax levied to effectuate this purpose must fall. *Child Labor Tax Case, supra; Railroad Retirement Board v. Alton Railroad Company* (1935), 295 U. S. 330; *Gibbons v. Ogden* (1824), 9 Wheat. 1, 199.

The fact that the arrangements between the Secretary of Agriculture and the individual farmers by which the latter reduce their acreage and the former makes benefit payments to them therefor out of the taxes collected from processors does not make the Act in purpose and effect any the less a regulation of agriculture within the State. *cf. Schecter Poultry Corporation v. U. S., supra,* p. 529. The arrangements are made by virtue of, and under authority of, the law, and it is idle to say that the act of the farmer in reducing his acreage pursuant to the contract with the Secretary of Agriculture is voluntary when the farmer knows that if he does not execute such agreement he is subjected to the penalty of having to sell his commodity at the same price at which other farmers sell it minus the substantial amount received by the other farmers by way of benefit payments. (R. 41.) Further-

more, without the tax provisions in the Act (which are certainly not voluntary) the enormous benefit funds with which to coerce the farmers into making the "voluntary" agreements would not be available and the result sought to be achieved by Congress, to wit, the regulation of agriculture within the several States, could not be accomplished.

Third, it seems plain that these taxes are not levied for the general welfare or a public purpose, as required by Article I, Section 8, Clause 1, of the Constitution. It is plain from the face of the Act that it is an attempt to redistribute purchasing power and the taxes provided by the Act are to be used solely for that purpose. Under Section 12(b) of the Act it is provided that "* * * for the purpose of effectuating the declared policy of this title, a sum equal to the proceeds derived from *all taxes* imposed under this title is hereby appropriated to be available to the Secretary of Agriculture * * *." That a tax cannot be levied on A for the purpose of paying a bounty to B was long ago held by this court in *Loan Association v. Topeka* (1874), 87 Wall. 655, 663, where Mr. Justice Miller said:

> "The power to tax is, therefore, the strongest, the most pervading of all the powers of the government, reaching directly or indirectly to all classes of the people. It was said by Chief Justice Marshall, in the case of McCullough v. The State of Maryland, that the power to tax is the power to destroy. A striking instance of the truth of the proposition is seen in the fact that the existing tax of ten per cent imposed by the United States on the circula-

> tion of all other banks than the National banks, drove out of existence every State bank of circulation within a year or two after its passage. This power can as readily be employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited wealth and prosperity to the other, if there is no implied limitation of the uses for which the power may be exercised."

It has been urged that the tax is constitutional because a favorable readjustment of the farmers' economic condition will ultimately redound to the general public good. The same sort of an argument was made to the court in *Loan Association v. Topeka, supra,* but the court rejected it, saying at page 665:

> "If it be said that a benefit results to the local public of a town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the innkeeper, the banker, the builder, the steamboat owner are equally promoters of the public good, and equally deserving the aid of the citizens by forced contributions."

While many assert that our economic difficulties are attributable to the condition of the farmer, there are still others who attribute it to the condition of the manufacturers or the condition of our export trade. If a tax can be levied to pay a bounty to farmers no reason is perceived why a tax may not be constitutionally levied to pay bounties to manu-

facturers or to those engaged in export trade or those engaged in any of our basic industries.

Finally, the processing tax provisions (Sec. 9),* even as altered by the amendment of August 24, 1935, violate Article I, Section 1, of the Constitution in making an unlawful delegation of legislative power to the Secretary of Agriculture. While the amendment provides for an initial processing tax on rice of 1c per pound (or $1.62 per barrel), nevertheless, under Sec. 9 the Secretary is given full power at any time to reduce, increase, modify or eliminate the tax, not by any practical standard, but largely by his opinion or prophecy of future prices and conditions. Where all such questions as to the duration of the tax and its increase or decrease or elimination are thus left to be resolved by the Secretary of Agriculture alone, it is clear that the Act still runs counter to Article I, Section 1, and is therefore unconstitutional. *Schechter Poultry Corporation, supra; Panama Refining Co. v. Ryan* (1934), 293 U. S. 388.

Point F

Certiorari Should Be Granted at the Present Time.

The opinion and order of the Circuit Court of Appeals, while interlocutory in form, in truth and in fact finally disposed of the case upon the merits. When it held that petitioner had a remedy at law and that the Courts below were without jurisdiction to grant the injunction prayed for (R. 98) the result

*Set out in Appendix D.

was a denial of all the relief sought by petitioner. Since the case will not come up for a hearing on its merits in the ordinary course of events until after the lapse of six or seven months the subject of the suit will be destroyed, the case become moot, and petitioner deprived of all right to have its case heard on the merits by any court unless this Court grants certiorari. If the order of the Circuit Court of Appeals is allowed to stand all the trial courts in the Circuit will feel bound thereby and will of necessity dismiss all bills filed in the Circuit for the purpose of testing the constitutionality of the taxes levied by the Agricultural Adjustment Act, as amended, with the result that not only your petitioner, but all other citizens living within the States of Texas, Louisiana, Mississippi, Alabama, Georgia and Florida be effectively deprived of any opportunity of testing the validity of this statute. There can be no question but that the constitutional questions raised in this case are grave and of national importance and this case involves an unprecedented situation. That the action of the Circuit Court of Appeals in denying the motion for an injunction to preserve the *status quo* pending appeal was wrong is plainly indicated by the fact that its action is contrary to the action of the Circuit Courts of Appeals for the Second, Sixth, Eighth, Ninth and Tenth Circuits, in granting injunctions in similar cases. It stands alone, unsupported by the decision of any other circuit. Its error can be corrected only by this Court now granting certiorari since there is

now before this Honorable Court a cause involving the constitutionality of the Agricultural Adjustment Act, which said cause is set for oral argument on December 9, 1935, and which will in the ordinary course of events be decided long prior to the time when this case would come up for hearing in the Circuit Court of Appeals. Without a writ of certiorari from this Honorable Court petitioner will have been compelled meanwhile to pay the taxes and if the Act be held unconstitutional its case would become moot and the taxes paid by it probably forever lost.

While the power to bring up a case pending in the Circuit Court of Appeals prior to final action in that Court is one to be sparingly exercised, the power nevertheless exists. *American Construction Company v. Jacksonville Railway* (1893), 148 U. S. 372. This Court said in *In Re Chetwood* (1897), 165 U. S. 443, 462:

> "And although, as observed in that case, this writ has not been issued as freely by this court as by the Court of Queen's Bench in England, and, prior to the Act of March 3, 1891, C. 517, 26 Stat. 826, had been ordinarily used as an auxiliary process merely, yet, whenever the circumstances imperatively demand that form of interposition the writ may be allowed, as at common law, to correct excesses of jurisdiction *and in furtherance of justice.*"

Likewise in *Harriman v. Northern Securities Company* (1905), 197 U. S. 244, 286, where the decree of the Circuit Court of Appeals actually dis-

posed of the entire case, although interlocutory in form, this Court granted certiorari. Other cases in which this Court has granted certiorari prior to a final decree in the Circuit Court of Appeals are *Denver v. New York Trust Company* (1913), 229 U. S. 123, 133; *Spiller v. Atchison, T. & S. F. Railway Company* (1920), 253 U. S. 117, 120; and *Dupont Powder Company v. Mastland* (1917), 244 U. S. 100. And in *The Three Friends* (1897), 166 U. S. 1, 49, this Court reviewed a decision of the District Court prior to action by the Circuit Court of Appeals on the appeal pending therein.

CONCLUSION

It is therefore respectfully submitted that this case is such as to call for the exercise by this Court of its supervisory powers. If the decisions of the District Court and the Circuit Court of Appeals stand, the result will be that petitioner will be deprived of its property without due process of law, and will be so deprived without any opportunity to test in the Courts the constitutional rights asserted in its bill of complaint. Unless this Honorable Court exercises such supervisory powers prior to the entry of a final decree in the Circuit Court of Appeals the subject matter of the suit will be destroyed, the suit become moot, and petitioner forever deprived of its constitutional rights. This Court should, therefore, review forthwith the decision of

the United States Circuit Court of Appeals for the Fifth Circuit and the decision of the District Court of the United States for the Eastern District of Louisiana.

Respectfully submitted,

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APPENDIX A

R. S. ART. 3224

No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

* * *

SECTION 21 OF AGRICULTURAL ADJUSTMENT ACT

SEC. 21 (*a*) No suit, action, or proceedings (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (*d*) of this section, may be reserved in the court's order.

(*b*) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regu-

lations of the Secretary with the approval of the President prior to the date of the adoption of this amendment, are hereby legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which have accrued and remain unpaid on the date of the adoption of this amendment shall be assessed and collected pursuant to Section 19, and to the provisions of law made applicable thereby. Nothing in this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary of Agriculture or of the President done or made prior to the date of the adoption of this amendment.

(*c*) The making of rental and benefit payments under this title, prior to the date of the adoption of this amendment, as determined, prescribed, proclaimed and made effective by the proclamations of the Secretary of Agriculture or of the President or by regulations of the Secretary, and the initiation, if formally approved by the Secretary of Agriculture prior to such date of adjustment programs under Section 8 (1) of this title, and the making of agreements with producers prior to such date, and the adoption of other voluntary methods prior to such date, by the Secretary of Agriculture under this title, and rental and benefit payments made pursuant thereto, are hereby legalized and ratified, and the making of all such agreements and payments, the initiation of such programs, and the adoption of all such methods prior to such date are hereby legalized, ratified, and confirmed as fully to all intents and purposes as if each such agreement, program, method, and payment had been specifically author-

ized and made effective and the rate and amount thereof fixed specifically by prior Act of Congress.

(*d*) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considerd by the court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (*a*) or (*c*) of Section 15, Section 16, or Section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of Section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by rea-

son of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be refunded or credited to any person (not a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (*a*) and (*b*) of Section 16, had the tax terminated by proclamation pursuant to the provisions of Section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish to the satisfaction of the Commissioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held

invalid a claim therefor (conforming to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2) no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, or jurisdiction of such courts based upon the amount in controversy.

(*e*) In connection with the establishment, by any claimant, of the facts required to be established in subsection (*d*) of this section, the Commissioner of Internal Revenue is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda, relative to any matter affecting the findings to be made by the Commissioner pursuant to subsection (*d*) of this section, to require the attendance of the claimant or of any officer or employee of the claimant, or the attendance of any other person having knowledge in the premises, and to take, or cause to be taken, his testimony with reference to any such matter, with power to administer oaths to such person or persons. It shall be lawful for the Commissioner, or any collector designated

by him, to summon witnesses on behalf of the United States or of any claimant to appear before the Commissioner, or before any person designated by him, at a time and place named in the summons, and to produce such books, papers, correspondence, memoranda, or other records as the Commissioner may deem relevant or material, and to give testimony or answer interrogatories, under oath, relating to any matter affecting the findings to be made by the Commissioner pursuant to subsection (*d*) of this section. The provisions of Revised Statutes 3174 and of Revised Statutes 3175 shall be applicable with respect to any summons issued pursuant to the provisions of this subsection. Any witness summoned under this subsection shall be paid, by the party on whose behalf such witness was summoned, the same fees and mileage as are paid witnesses in the courts of the United States. All information obtained by the Commissioner pursuant to this subsection shall be available to the Secretary of Agriculture upon written request therefor. Such information shall be kept confidential by all officers and employees of the Department of Agriculture, and any such officer or employee who violates this requirement shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both, and shall be removed from office.

(*f*) No refund, credit, or abatement shall be made or allowed of the amount of any tax, under Section 15, or Section 17, unless, within one year after the right to such refund, credit, or abatement has accrued, a claim for such refund, credit, or abatement (conforming to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled to such refund, credit, or abatement, except that if the right to any such refund, credit, or abatement accrued prior to the date of the adoption of this amendment, then

such one-year period shall be computed from the date of this amendment. No interest shall be allowed or paid, or included in any judgment, with respect to any such claim for refund or credit.

(*g*) The provisions of Section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax, or any refund or credit authorized by subsection (*a*) or (*c*) of Section 15, Section 16, or Section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of Section 317 of the Tariff Act of 1930.

APPENDIX B

Provisions of Title 26, U. S. C. Dealing With Collection of Taxes By Distraint

Sec. 115. *Lien for Taxes.* (*a*) If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. (Balance of Section deals with recording of lien and giving of releases.) (R. S. Sec. 3186; Mar. 1, 1879, C. 125, Sec. 3, 20 Stat. 331; Mar. 4, 1913, C. 166, 37 Stat. 1016; Feb. 26, 1925, C. 344, 43 Stat. 994; May 29, 1928, 8 a.m., C. 852, Title IV, Sec. 613, 45 Stat.)

116. *Distraint for Taxes.* If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with 5 per centum additional thereto, and interest as aforesaid, by distraint and sale, in the manner hereafter provided, of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid. (Balance of Section deals with exempt property.) (R. S. Sec. 3187; June 2, 1924, 4:01 p.m., C. 234, Sec. 1016, 43 Stat. 343.)

117. *Same; Levy.* In such case of neglect or refusal, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property

and rights to property, except such as are exempt by Section 116 of this title, belonging to such person, or on which the said lien exists, for the payment of the sum due as aforesaid, with interest and penalty for nonpayment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy. (R. S. Sec. 3188.)

118. *Same; Exhibit of Evidences Relating to Property.* All persons, and officers of companies or corporations, are required, on demand of a collector or deputy collector about to distrain or having distrained on any property, or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the tax due as aforesaid. (R. S. Sec. 3189.)

119. *Same; Proceedings On.* When distraint is made, as aforesaid, the officer charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the officer making such distraint, shall be left with the owner or possessor or such goods or effects, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded, and the time and place of sale; and the said officer shall forthwith cause a notification to be published in some newspaper within the county wherein said distraint is made, if a newspaper is published in said county, or to be publicly posted at the post office, if there be one within five miles nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Such notice shall specify the articles distrained, and the time and place for the sale thereof. Such time shall not be less than ten nor more than twenty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notice as herein

provided, and the place proposed for the sale shall not be more than five miles distant from the place of making such distraint. Said sale may be adjourned from time to time by said officer, if he deems it advisable, but not for a time to exceed in all thirty days. (R. S. Sec. 3190.)

120. *Same; Sale of Property Subject to Tax.* When property subject to tax, but upon which the tax has not been paid, is seized upon distraint and sold, the amount of such tax shall, after deducting the expenses of such sale, be first appropriated out of the proceeds thereof to the payment of the tax. And if no assessment of such tax has been made upon such property, the collector shall make a return thereof in the form required by law, and the Commissioner of Internal Revenue shall assess the tax thereon. (R. S. Sec. 3191.)

121. *Same; Sale of Property; Purchase for United States.* When any personal property is advertised for sale under distraint as aforesaid, the officer making the seizure shall proceed to sell such property at a public auction, offering the same at a minimum price, including the expenses of making the levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the officer conducting the sale may declare the same to be purchased by him for the United States. The property so purchased may be sold by the collector within whose district the sale was made under such regulations as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. The collector shall render to the Commissioner a distinct account of all charges incurred in such sales, and, in case of resale, shall pay into the Treasury the proceeds as provided in Section 3210 of the Revised Statutes, as amended (R. S. 3192, as amended May 10, 1934, 11:40 a.m., C. 277, Sec. 508, 48 Stat.)

122. *Same; Restoration of Property on Payment Before Sale.* (This merely provides for return of property distrained upon if tax is paid prior to sale.) (R. S. 3193.)

123. *Same; Effect of Certificate of Sale.* In all cases of sale, as aforesaid, the certificate of such sale shall be prima-facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale, and shall transfer to the purchaser all right, title, and interest of such delinquent in and to the property sold; and where such property consists of stocks, said certificate shall be notice, when received, to any corporation, company, or association of said transfer, and shall be authority to such corporation, company, or association to record the same on their books and records in the same manner as if transferred or assigned by the party holding the same, in lieu of any original or prior certificates, which shall be void, whether canceled or not. And said certificates, where the subject of sale is securities or other evidences of debt, shall be good and valid receipts to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt. (R. S. Sec. 3194.)

124. *Same; When Property Not Divisible.* (This deals with special case of indivisible property and allows sale of the whole even though its value exceeds amount of the tax. (R. S. Sec. 3195; June 2, 1924, 4:01 p.m., C. 234, Sec. 1031 (*a*), 43 Stat. 351; re-enacted Jan. 26, 1926, 10:25 a.m., C. 27, Title XI, Sec. 1128(a), 144 Stat. 124.)

125. *Real Estate; Sale to Satisfy Taxes.* When goods, chattels, or effects sufficient to satisfy the taxes imposed upon any person are not found by the collector or deputy collector, he is authorized to collect the same by seizure and sale of real estate. (R. S. Sec. 3196.)

126. *Same; Proceedings.* The officer making the seizure mentioned in Section 125 of this title shall give notice to the person whose estate it is proposed to sell by giving him in hand, or leaving at his last or usual place of abode, if he has any such within the collection district where said estate is situated, a notice, in writing, stating what particular estate is to be sold, describing the same with reasonable certainty, and the time when and place where said officer proposes to sell the same; which time shall not be less than twenty nor more than forty days from the time of giving said notice. The said officer shall also cause a notification to the same effect to be published in some newspaper within the county where such seizure is made, if any such there be, and shall also cause a like notice to be posted at the postoffice nearest to the estate seized, and in two other public places within the county; and the place of said sale shall not be more than five miles distant from the estate seized, except by special order of the Commissioner of Internal Revenue. At the time and place appointed, the officer making such seizure shall proceed to sell the said estate at public auction, offering the same at a minimum price, including the expense of making such levy, and all charges for advertising and an officer's fee of $10. (Balance of section deals with details of conducting sale.) (R. S. Sec. 3197; Feb. 27, 1877, C. 69, Sec. 1, 19 Stat. 248; Mar. 1, 1879, C. 125, Sec. 3, 20 Stat. 331; May 28, 1896, C. 252, 29 Stat. 179; Mar. 3, 1905, C. 1483, Sec. 1, 33 Stat. 1207; July 19, 1919, C. 24, Sec. 1, 41 Stat. 209.)

127. *Same; Certificate of Purchase; Deed.* (This provides for execution of deed by the collector to the purchaser.) (R. S. Sec. 3198.)

128. *Same; Deed Prima-Facie Evidence.* The deed of sale given in pursuance of Section 127 of this title shall be prima-facie evidence of the facts therein stated; and if the proceedings of the officer as set

forth have been substantially in accordance with the provisions of law, shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real estate thus sold at the time the lien of the United States attached thereto. (R. S. Sec. 3199.)

129. *Same; Place of Seizure (and Sale).* Any collector or deputy collector may, for the collection of taxes imposed upon any person, and committed to him for collection, seize and sell any of the property, real or personal (except property exempt from distraint and sale, under Section 3187 of the Revised Statutes, or any right or interest therein, of such person situated in any other collection district within the State in which such officer resides, notwithstanding the provisions of Section 3209 of the Revised Statutes; and his proceedings in relation thereto shall have the same effect as if the same were had in his proper collection district. (R. S. Sec. 3200; amended Jan. 26, 1926, 11:25 a.m., Title XI, Sec. 1129, 44 Stat. 125.)

130. *Same; Redemption Prior to Sale.* (This provides for return of property seized on payment of tax.) (R. S. Sec. 3201.)

131. *Same; Redemption After Sale.* (This provides for redemption after sale by payment to purchaser, within one year after the sale, of the purchase price with interest at 20% per annum.) (R. S. 3202.)

APPENDIX C

Penalty Provisions

Section 19(b) of the Agricultural Adjustment Act:

> "Sec 19. * * * (*b*) All provisions of law, including penalties, applicable with respect to the taxes imposed by Section 600 of the Revenue Act of 1926, and the provisions of Section 626 of the Revenue Act of 1932, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable in respect of taxes imposed by this title: * * * ."

Section 1114 of 1926 Revenue Act, applicable with respect to taxes imposed by Section 600 of that Act:

> "Sec. 1114. (*a*) Any person required under this Act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act, who wilfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisioned for not more than one year, or both, together with the costs of prosecution.
>
> "(*b*) Any person required under this Act to collect, account for and pay over any tax imposed by this Act, who willfully fails to collect or truthfully account for and pay over such tax,

and any person who willfully attempts in any manner to evade or defeat any tax imposed by this Act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

"(*c*) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal-revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

"(*d*) Any person who willfully fails to pay, collect, or truthfully account for and pay over, any tax imposed by Titles IV, V, VI, VII, VIII, and IX, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of Section 3176 of the Revised Statutes, as amended, or for any offense for which a penalty has been recovered under Section 3256 of the Revised Statutes.

"(*e*) Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

"(*f*) The term 'person' as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs."

APPENDIX D

PROCESSING TAX PROVISIONS OF AGRICULTURAL ADJUSTMENT ACT, AS AMENDED, AS APPLIED TO RICE

SEC. 9. (*a*) To obtain revenue for extraordinary expenses incurred by reason of the national economic emergency, there shall be levied processing taxes as hereinafter provided. When the Secretary of Agriculture determines that any one or more payments authorized to be made under Section 8 are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation; except that * * * (2) in the case of rice, the Secretary of Agriculture shall, before April 1, 1935, proclaim that rental or benefit payments are to be made with respect thereto, and the processing tax shall be in effect on and after April 1, 1935. * * * In the case of rice, the period from August 1 to July 31, both inclusive, shall be considered to be the marketing year. The processing tax shall be levied, assessed, and collected upon the first domestic processing of the commodity, whether of domestic production or imported, and shall be paid by the processor. The rate of tax shall conform to the requirements of subsection (*b*). Such rate shall be determined by the Secretary of Agriculture as of the date the tax first takes effect, and the rate so determined shall, at such intervals as the Secretary finds necessary to effectuate the declared policy, be adjusted by him to conform to such requirements. The processing tax shall terminate at the end of the marketing year current at the time the Secretary proclaims that all payments authorized under Section 8 which are in effect are to be discontinued with

respect to such commodity. The marketing year for each commodity shall be ascertained and prescribed by regulations of the Secretary of Agriculture: * * *

(*b*) (1) The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, plus such percentage of such difference, not to exceed 20 per centum, as the Secretary of Agriculture may determine will result in the collection, in any marketing year with respect to which such rate of tax may be in effect pursuant to the provisions of this title, of an amount of tax equal to (A) the amount of credits or refunds which he estimates will be allowed or made during such period pursuant to section 15(c) with respect to the commodity (B) the amount of tax which he estimates would have been collected during such period upon all processing of such commodity which are exempt from tax by reason of the fact that such processings are done by or for a State, or a political subdivision or an institution thereof, had such processings been subject to tax. If, prior to the time the tax takes effect, or at any time thereafter, the Secretary has reason to believe that the tax at such rate, or at the then existing rate, on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, will cause or is causing such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depression of the farm price of the commodity, then the Secretary shall cause an appropriate investigation to be made, and afford due notice and opportunity for hearing to interested parties. If thereupon the Secretary determines and proclaims that any such result will oc-

cur or is occurring, then the processing tax on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be at such lower rate or rates as he determines and proclaims will prevent such accumulation of surplus stocks and depression of the farm price of the commodity, and the tax shall remain during its effective period at such lower rate until the Secretary, after due notice and opportunity for hearing to interested parties, determines and proclaims that an increase in the rate of such tax will not cause such accumulation of surplus stocks or depression of the farm price of the commodity. Thereafter the processing tax shall be at the highest rate which the Secretary determines will not cause such accumulation of surplus stocks or depression of the farm price of the commodity, but it shall not be higher than the rate provided in the first sentence of this paragraph. * * *

SPECIFIC TAX RATE—RICE

(3) For the period from April 1, 1935, to July 31, 1936, both inclusive, the processing tax with respect to rice shall be levied, assessed, collected, and paid at the rate of 1 cent per pound of rough rice. * * *

(6) (A) Any rate of tax which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6) on the processing of any commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be decreased (including a decrease to zero) in accordance with the formulae, standards, and requirements of paragraph (1) of

this subsection, in order to prevent such reduction in the quantity of such commodity or the products thereof domestically consumed as will result in the accumulation of surplus stocks of such commodity or the products thereof or in the depression of the farm price of the commodity, and shall thereafter be increased in accordance with the provisions of paragraph (1) of this subsection but subject to the provisions of subdivision (B) of this paragraph (6).

(B) If the average farm price of any commodity, the rate of tax on the processing of which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or is established pursuant to this paragraph (6), during any period of twelve successive months ending after July 1, 1935, consisting of the first ten months of any marketing year and the last two months of the preceding marketing year—

(*i*) is equal to, or exceeds by 10 per centum or less, the fair exchange value thereof, or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 20 per centum of the fair exchange value thereof.

(*ii*) exceeds by more than 10 per centum, but not more than 20 per centum, the fair exchange value thereof, the rate of such tax shall subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 15 per centum of the fair exchange value thereof.

(*iii*) exceeds by more than 20 per centum the fair exchange value thereof, the rate of such

tax shall (subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 10 per centum of the fair exchange value thereof.

(C) Any rate of tax which has been adjusted pursuant to this paragraph (6) shall remain at such adjusted rate unless further adjusted or terminated pursuant to this paragraph (6), until December 31, 1937, or until July 31, 1936, in the case of rice.

(D) In accordance with the formulae, standards, and requirements prescribed in this title, any rate of tax prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6) shall be increased.

(E) Any tax, the rate of which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6), shall terminate pursuant to proclamation as provided in section 9 (a) of this title or pursuant to section 13 of this title. Any such tax with respect to any basic commodity which terminates pursuant to proclamation as provided in section 9 (a) of this title shall again become effective at the rate prescribed in paragraph (2), (3), (4) or (5) of this subsection, subject however, to the provisions of subdivisions (A) and (B) of this paragraph (6), from the beginning of the marketing year for such commodity next following the date of a new proclamation by the Secretary as provided in section 9 (a) of this title, if such marketing year begins prior to December 31, 1937, or prior to July 31, 1936, in the case of rice, and shall remain at such rate until altered or terminated pursuant to the provisions of section 9 or terminated pursuant to section 13 of this title. * * *

(G) If the applicability to any person or circumstances of any tax, the rate of which is fixed in pursuance of this paragraph (6), is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be levied, assessed, collected, and paid (in lieu of all rates of tax fixed in pursuance of this paragraph (6) with respect to all tax liabilities incurred under this title on or after the effective date of each of the rates of tax fixed in pursuance of this paragraph (6)), rates of tax fixed under paragraph (2), (3), (4) or (5), and such rates shall be in effect (unless the particular tax is terminated pursuant to proclamation, as provided in section 9 (a) or pursuant to section (13) until altered by Act of Congress; except that, for any period prior to the effective date of such holding of invalidity, the amount of tax which represents the difference between the tax at the rate fixed in pursuance of this paragraph (6) and the tax at the rate fixed under paragraphs (2), (3), (4) and (5) shall not be levied, assessed, collected, or paid.

RICE—SPECIAL RULE

(7) In the case of rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to a processor, except that, where the producer processes his own rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to the place of processing. * * *

(*c*) For the purposes of part 2 of this title, the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period

specified in section 2; and, in the case of all commodities where the base period is the pre-war period, August 1909 to July 1914, will also reflect interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during said base period; and the current average farm price and the fair exchange value shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture. The rate of tax upon the processing of any commodity, in effect on the date on which this amendment is adopted, shall not be affected by the adoption of this amendment and shall not be required to be adjusted or altered, unless the Secretary of Agriculture finds that it is necessary to adjust or alter any such rate pursuant to section 9 (a) of this title.

(*d*) As used in part 2 of this title— * * *

(7) In the case of rice—

(A) The term "rough rice" means rice in that condition which is usual and customary when delivered by the producer to a processor.

(B) The term "processing" means the cleaning, shelling, milling (including custom milling for toll as well as commercial milling), grinding, rolling, or other processing (except grinding or cracking by or for the producer thereof for feed for his own livestock, cleaning by or directly for a producer for seed purposes, and drying) of rough rice; and in the case of rough rice with respect to which a tax-payment warrant has been previously issued or applied for by application then pending, the term "processing" means any one of the above mentioned processings or any preparation or handling in connection with the sale or other disposition thereof.

(C) The term "co-operating producer" means

any person (including any share-tenant or share-cropper) whom the Secretary of Agriculture finds to be willing to participate in the 1935 production-adjustment program for rice.

(D) The term "processor," as used in subsection (b-1) of section 15 of this title, means any person (including a co-operative association of producers) engaged in the processing of rice on a commercial basis (including custom milling for toll as well as commercial milling).

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Supreme Court of the United States

OCTOBER TERM, 1935

No. 586

FARMERS RICE MILLING CO., INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND SUPPORTING BRIEF THEREON.

C. A. McCOY,
Attorney for Petitioner.

McCOY, KING & JONES,
Lake Charles, La.,
Of Counsel.

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R. S. §3224 ..... 17, 18, 19, 20, 21, 31, 37
United States Code, Title 26, Secs. 115-131 ..... 18, 19, 36
United States Code, Title 28, Sec. 347 16

No.....

IN THE

Supreme Court of the United States

FARMERS RICE MILLING COMPANY, INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

PETITION OF FARMERS RICE MILLING COMPANY, INC., FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

MAY IT PLEASE THE COURT:

The petitioner, Farmers Rice Milling Co., Inc., respectfully prays for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, to hear this cause prior to its decision by the Circuit Court of Appeals and to review the decision of the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, entered in this cause on October 28, 1935, and further to review the decision of the Circuit Court of Appeals in denying

the application of petitioner for a preliminary injunction pending the appeal of said cause in said Circuit Court of Appeals. Petitioner respectfully shows this Honorable Court:

1.

Questions Presented.

(*a*) Is the so-called Agricultural Adjustment Act, as amended on August 24, 1935, constitutional?

(*b*) Does Section 21(d) of said Act deprive petitioner of an adequate remedy at law?

(*c*) Does Article 3224 R. S. or Section 21(a) of said Act forbid the granting of an injunction when petitioner has no adequate remedy at law?

(*d*) If Section 21(a) of said Act forbids an injunction in a case where petitioner has no adequate remedy at law, is said Section 21(a) constitutional?

(*e*) If Congress may constitutionally deprive the Courts of jurisdiction to enjoin the collection of illegal taxes and at the same time deprive the taxpayer of any legal remedy to recover such illegal taxes, may the summary proceedings provided in Sections 115 to 131, Title 26, U. S. C., as amended, be constitutionally employed for the collection of such illegal taxes?

2.

Summary Statement of the Matter Involved.

Petitioner owns and operates a rice mill at New Orleans, Louisiana. Under the Act of the 73rd

Congress, P. L. No. 10, approved on May 12, 1933, as amended, known as the Agricultural Adjustment Act, there is imposed a processing tax of 1c per pound upon the first processing or milling of rough rice. The amount of tax shown to be due by petitioner in its return filed for the month of September, 1935, was $11,946.25. This tax was due and payable to respondent on October 30, 1935. October 28, 1935, petitioner filed its bill in the District Court to restrain the collection of this tax and any tax which might become due in subsequent months on the ground that said tax was unconstitutional, that petitioner was without adequate remedy at law, and that without such injunction it would be irreparably damaged. (R. 2.) Respondent filed a motion to dismiss on the ground that the Court had been deprived of jurisdiction by Art. 3224, U. S. R. S., and Section 21(a) of the Agricultural Adjustment Act. (R. 54.) Seven similar suits were consolidated with this by Court order (R. 58) and the Court heard at the same time petitioner's motion for a preliminary injunction and respondent's motion to dismiss for want of jurisdiction. At the hearing petitioner introduced two affidavits in support of its allegation that, due to the peculiar nature of the rice business, it was impossible to accurately determine the profit or loss resulting from the processing and sale of any given lot of rice. (R. 60, 65.) The affidavits further showed that it is impossible to prove what part, if any, of the processing tax is passed forward to the consumer or back to the producer or what part is borne by the miller. Respondent intro-

duced the joint affidavit of three deputy Internal Revenue Collectors which affidavit was inconsistent with the affidavits of petitioner in only one respect. (R. 75.) At the conclusion of the hearing the Court denied petitioner's motion for a preliminary injunction and granted respondent's motion to dismiss upon the ground that the Court was deprived of jurisdiction by Article 3224, U. S. R. S., and Section 21(a) of said Act. (R. 79.) Said Article 3224* and Section 21(a)* forbid the granting of an injunction to restrain the collection of any tax, and of the processing tax here involved, respectively. Under Section 21(d)* of said Agricultural Adjustment Act it is provided that no tax collected under the Act may be recovered except upon proof satisfactory to the Commissioner of Internal Revenue that the payer of the tax had not, directly or indirectly, included such amount in the price of the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee of the commodity, and that the price paid by the taxpayer for the unprocessed commodity was not reduced by any part of such amount. The bill below, and supporting affidavits, show the manner in which rough rice is milled and the manner in which it is sold, and that from any given lot of rough rice many different grades and qualities of clean rice are produced. The usual and customary method of selling rice is to sell it on samples made up of mixtures of different lots of clean rice which in turn are derived from differ-

*Set out in Appendix to Brief.

ent lots of rough rice purchased from different parties, and when an order for clean rice is received, based on any particular sample, the miller fills the order of clean rice from a mixture from various lots of clean rice. Many sales are made during a given season made up of various mixtures of clean rice, and there is practically an unlimited combination of lots of clean rice that go into the various sales. There is no way of accurately allocating to the various lots of rice going into any given mix any definite part of the price received for the entire mix. (R. 16-21.) Petitioner's sworn bill and affidavits showed that for these reasons it is impossible for petitioner or any other rice miller to make the proof required for recovery of the tax paid, if the law be held unconstitutional, even if it were otherwise possible to make such proof. Petitioner's sworn bill alleged that unless the injunction prayed for was granted: (1) It would be without adequate remedy at law to recover the taxes paid in the event they be held unconstitutional; (2) if any legal remedy existed, it would entail a multiplicity of suits; (3) it would become subject to heavy civil and criminal penalties and (4) it would suffer great and irreparable damages for specific reasons set out. (R. 15, 16, 23.) Respondent filed no answer denying any of these allegations. Petitioner alleged below that the said Section 21(d) did not apply to its suit because petitioner had no adequate remedy at law. It alleged further that, if said section be interpreted as prohibiting the injunction prayed for, the said

section, together with the other provisions of the Act, violated the Fifth Amendment to the Constitution in that said unconstitutional taxes would be collected from petitioner and petitioner would have no remedy by which it could recover said taxes, if they were unlawful, and thereby petitioner would be deprived of the right to test the constitutionality of the taxes. (R. 23.) Petitioner offered to give such security as the Court might require if the injunction were granted. (R. 24.) There was neither pleading nor proof that the granting of the injunction would in any wise injure respondent if the tax were ultimately held constitutional.

On October 29, 1935, petitioner was allowed an appeal. (R. 81.) On the same day petitioner applied for, and was denied, an injunction pending appeal. (R. 80.) The record was duly filed in the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, on November 4, 1935, being Cause No. 7950 on the docket of that Court. On November 4, 1935, petitioner applied to said Circuit Court of Appeals for an injunction against the respondent pending the hearing of its appeal (R. 87), but the Circuit Court of Appeals on November 5, 1935, denied the application. (R. 98.)

3.

Reasons Relied Upon for the Allowance of the Writ.

This case, with its companion cases, presents an entirely unprecedented situation. It presents questions of gravity and importance. It involves the

constitutionality of an important Federal statute and the rulings of the Court below, insofar as they may be taken to have held the statute constitutional, are probably in conflict with the decisions of this Court in *Loan Association v. Topeka* (1874), 20 Wall. 655; *Child Labor Tax Case* (1922), 259 U. S. 20; *Hill v. Wallace* (1922), 259 U. S. 44; *Hammer v. Dagenhart* (1918), 247 U. S. 251; and *Schechter Poultry Corporation v. United States* (1935), 295 U. S. 495; and contrary to the decision of the United States Circuit Court of Appeals for the Second Circuit in *Butler et al. v. United States* (1935), 78 Fed. (2nd) 1. The District Court and the Circuit Court of Appeals in holding that Congress may constitutionally forbid the granting of an injunction against summary collection of taxes, while at the same time depriving the taxpayer of any adequate remedy at law, presents a constitutional question of great importance never decided by this Court and a question which should be definitely decided. Though this question has never been *directly* decided by this Court, the decisions of the Courts below probably conflict with the decisions of this Honorable Court in *Truax v. Corrigan* (1921), 257 U. S. 312; *Brinkerhoff-Faris Trust & Savings Company v. Hill* (1930), 281 U. S. 673, and inferentially *Graham & Foster v. Goodcell* (1931), 282 U. S. 409, 430, 431; *Michaelson v. United States* (1924), 266 U. S. 42, 64, 65, 66, and *Phillips v. Commissioner* (1931), 283 U. S. 589, 596. This holding was particularly erroneous when the respondent was, at the same time,

authorized to collect the tax by summary proceedings under Sections 115 to 131, Title 26, U. S. C., as amended.

In holding that Article 3224, U. S. R. S., and Section 21(a) of said Act deprive the courts of jurisdiction to grant an injunction under the unusual and extraordinary circumstances of this case, the courts below decided an important question of Federal law in a way probably in conflict with the decisions of this Honorable Court in *Hill v. Wallace* (1922), 259 U. S. 44, and *Miller, Collector, v. Standard Nut Margarine Company* (1932), 284 U. S. 498, and in conflict with the unreported decisions of the Second, Sixth, Eighth, Ninth and Tenth Circuit Courts of Appeals, which granted injunctions pending appeal in cases similar to the present case.

The District Court, in refusing to grant petitioner's motion for a preliminary injunction, and in refusing to grant petitioner's motion for an injunction pending appeal, and the Circuit Court of Appeals in refusing to grant petitioner's motion for an injunction pending appeal, have so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Honorable Court's power of supervision and this action of the courts below is probably in conflict with the decision of this Honorable Court in *Ohio Oil Company v. Conway* (1929), 279 U. S. 813, and is in conflict with the holdings of every other Circuit Court of Appeals which has passed upon this question, to wit, the Circuit Courts of Appeals for the Second, Sixth, Eighth, Ninth and Tenth Circuits.

4.

Reasons Relied Upon for the Allowance of Writ Before Action on the Merits by the Circuit Court of Appeals.

This case, with its companion cases, presents a situation unparalleled in American history. Under the provisions of Sections 115 to 131, Title 26, U. S. C., as amended, the respondent is armed with weapons for the immediate forcible collection of the tax from petitioner, and those similarly situated, which they are powerless to resist. The District Court and Circuit Court of Appeals below have, contrary to the decisions of all other Circuit Courts of Appeals passing upon the question, held themselves deprived of any jurisdiction whatsoever to grant petitioner any relief. In the ordinary course of events it will be six or seven months before petitioner's appeal to the Circuit Court of Appeals will be heard on the merits. Meanwhile, through collection of the tax the subject-matter of the appeal may be destroyed, and the case become moot before a hearing may be had in the Circuit Court of Appeals. In addition, the order of the court below, though apparently an interlocutory order, has the effect of finally disposing of the appeal on the merits. The questions involved are of great national importance, and deserve the prompt consideration of this Honorable Court. This petition raises important questions of constitutional law not raised by any other petition now before this Court, and particularly it raises the question whether the provisions of Sections 115 to 131, Title 26, U. S. C., as

amended, are constitutional, if it be held that Congress may constitutionally deprive a taxpayer of all adequate remedy at law to recover taxes illegally collected while at the same time forbidding the granting of an injunction to restrain their collection. Hundreds of similar suits throughout the country involve this question, as well as the others herein raised, and the situation thus presented is so unusual and unprecedented as to justify this Honorable Court in requiring the record below to be certified to it forthwith for decision.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari may issue out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Fifth Circuit commanding said court to certify and send to this Court, on a day certain, to be therein designated, a full and complete Transcript of the Record and all of the proceedings in the Circuit Court of Appeals in said cause entitled Farmers Rice Milling Co., Inc., Appellant v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Appellee, No. 7950 on its docket, to the end that said cause may be reviewed and determined by this Court as provided by Section 240 of the Judicial Code, as amended, and that your petitioner may have such other and further relief or remedy in the premises as this Court may deem appropriate and in conformity with said provisions of the Judicial Code, and that said judgment of the

District Court be reversed by this Honorable Court and such relief granted as is appropriate to the cause.

FARMERS RICE MILLING COMPANY, INC.,

By C. A. McCOY,
Attorney for Petitioner.

Of Counsel,
McCOY, KING & JONES,
Lake Charles, La.

No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

FARMERS RICE MILLING COMPANY, INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

The Opinions of the Courts Below.

The District Court wrote no opinion and the Circuit Court of Appeals has not yet rendered any decision on the merits of the appeal. The *per curiam* opinion of the Court denying the injunction pending appeal is found on page 98 of the record.

II.

Jurisdiction.

(1) Jurisdiction of this cause is conferred upon this Honorable Court by *Judicial Code, Section* 240, *as amended; United States Code, Title* 28, *Section* 347.

(2) The date of the judgment of the Trial Court to be reviewed is October 28, 1935 (R. 79), the date of the order of the Circuit Court of Appeals denying the injunction pending appeal sought to be reviewed is November 5, 1935. (R. 98.)

(3) The power of this Honorable Court to review the case prior to a disposition of it by the Circuit Court of Appeals and to review the action of the Circuit Court of Appeals in refusing to grant an interlocutory order to preserve the *status quo* is sustained by the following, among other, cases:

The Three Friends (1897), 166 U. S. 1, 49.
Denver v. New York Trust Company (1913), 229 U. S. 123, 133.
Harriman v. Northern Securities Company (1905), 197 U. S. 244, 286.
American Construction Company v. Jacksonville Railway (1893), 148 U. S. 372, 384.
Forsyth v. Hammon (1897), 166 U. S. 506, 513.
In re Chetwood (1897), 165 U. S. 443, 462.
McClellan v. Carland (1910), 217 U. S. 268, 277.
Hanover Star Milling Company v. Metcalf (1916), 240 U. S. 403, 408.
Gay v. Ruff (1934), 292 U. S. 25, 30.

III.

Statement of the Case.

A full statement of the case has been given under heading 2 in the petition and in the interest of brevity the statement is not repeated at this point.

IV.

Specification of Errors.

(1) The District Court erred in holding that it was without jurisdiction to hear petitioner's cause because of the provisions of R. S. Sec. 3224, and Sec. 21(a) of the Agricultural Adjustment Act, as amended.

(2) The District Court erred in refusing to grant petitioner a preliminary injunction pending a hearing on the merits.

(3) The District Court and Circuit Court of Appeals erred in holding that said Sec. 21(a) did not deprive petitioner of its property without due process of law contrary to the Fifth Amendment to the Constitution of the United States, in view of the allegations in the bill, admitted by the motion to dismiss, that petitioner was without remedy at law to recover the taxes paid if they were held to be illegal.

(4) The District Court and the Circuit Court of Appeals erred in holding that if said Sec. 21(a) forbade the granting of an injunction restraining the collection of the tax, and if petitioner had no remedy at law to recover the same, if it be held they were illegally collected, respondent could neverthe-

less employ the summary proceedings for immediate collection of the tax provided in Sections 115 to 131, Title 26, U. S. C., as amended, without depriving petitioner of its property without due process of law contrary to the Fifth Amendment to the Constitution of the United States.

(5) The District Court and the Circuit Court erred in holding that either or both R. S. §3224, and Sec. 21(a) of said Act prevented the granting of an injunction under the special and extraordinary circumstances presented by this case.

(6) The Circuit Court of Appeals erred in holding that petitioner had "a remedy at law to recover back any taxes illegally exacted."

(7) The Circuit Court of Appeals erred in refusing to grant petitioner an injunction to preserve the *status quo* pending its appeal from the order dismissing the bill.

(8) The Circuit Court of Appeals erred in refusing to grant petitioner an injunction pending the appeal for the purpose of preserving the appellate jurisdiction of that Court.

(9) The Circuit Court of Appeals erred in holding either or both R. S. §3224, and Sec. 21(a) of said Act "deprived the Court of jurisdiction to grant injunctive relief."

(10) The District Court and Circuit Court of Appeals erred in not holding the Agricultural Adjustment Act, as amended, to be violative of Art. 1, Sec. 1, Amendments Five and Ten of the Constitution of the United States.

Petitioner expects to rely on all of the foregoing specifications of error.

V.

ARGUMENT

Summary of the Argument.

Point A

Neither R. S. §3224, nor Sec. 21(a) of the Agricultural Adjustment Act, properly interpreted, bars injunctive relief in this case.

Point B

Sec. 21(d) of the Agricultural Adjustment Act deprives petitioner of any adequate remedy at law.

Point C

If R. S. §3224, and Sec. 21(a) of the Agricultural Adjustment Act forbid the granting of an injunction in this case, then they are unconstitutional.

Point D

The summary proceedings provided in Sections 115 to 131, Title 26, U. S. C., as amended, are unconstitutional when applied to a taxpayer who has been deprived of both legal and equitable remedies to test the constitutionality of the tax thus sought to be collected.

Point E

The Agricultural Adjustment Act, as amended, is unconstitutional.

Point F

This is a case where certiorari should be granted prior to the final decree by the Circuit Court of Appeals.

Point A

Inapplicability of R. S. §3224 and Section 21(a) of the Agricultural Adjustment Act.

In wording and in effect R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act, as amended, are for all practical purposes identical. For the convenience of the Court the two acts are here set out side by side:

R. S. §3224.	**A. A. A. Sec. 21(a).**
No suit	No suit, action or proceeding (including probate, administration, receivership, and bankruptcy proceedings)
shall be maintained in any court	shall be brought or maintained in any court
for the purpose of restraining the assessment or collection of any tax.	if such suit, action or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or

> collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment * * *.

This Court has consistently held that despite the apparently unconditional terms of R. S. §3224, injunctions against the collection of a tax may issue in proper cases. The latest expression of the Court on the point is found in *Miller v. Standard Nut Margarine Company* (1932), 284 U. S. 498, 509, where the Court said:

> "The section does not refer specifically to the rule applicable to cases involving exceptional circumstances. The general words employed are not sufficient, and it would require specific language undoubtedly disclosing that purpose, to warrant the inference that Congress intended to abrogate that salutary and well established rule. * * * It has never held the rule to be absolute, but has repeatedly indicated that extraordinary and exceptional circumstances render its provisions inapplicable. * * *
>
> " * * * It requires no elaboration of the facts found to show that the enforcement of the Act against respondent would be arbitrary and oppressive, would destroy its business, ruin it financially and inflict loss for which it would have no remedy at law. It is clear that, by reason of the special and extraordinary facts and circumstances, Sec. 3224 does not apply."

See also Hill v. Wallace (1922), 259 U. S. 44, 62; Dodge v. Osborn, (1916), 240 U. S. 118, 121.

Section 21(a) was included in the amendment to the Act of August 24, 1935, after numerous suits to restrain the collection of the tax had been filed throughout the country in which the contention was made that the supposed tax was in fact no tax at all but a penalty. *e.g., Penn v. Glenn,* 10 Fed. Supp. 483, 484 (April 13, 1935); F. G. Vogt & Sons, Inc. v. Rothensies, 11 Fed. Supp. 225, 230 (July 17, 1935); Armour & Company v. Harrison (not yet reported, District Court, Northern District of Illinois), in which the Court said in connection with R. S. §3224:

> "Merely to call this exaction a tax does not make it a tax. It is not levied for governmental purposes; therefore, it is not a tax. Therefore, the statute has no application to it."

The obvious purpose of Congress in including this section in the amendment was to make certain its intention that the principle of R. S. §3224 should apply to suits brought to restrain collection of these particular taxes. Having expressed its intention in words practically identical with those used in R. S. §3224, the amendment must be interpreted in the light of the well settled rule that, when a statute is reenacted in the same words as a previous statute which has received a judicial interpretation, the re-enacted statute includes the previous judicial interpretation. Louisville Cement Co. v. Interstate Commerce Commission (1918), 246 U. S. 638, 644.

Further it must be interpreted in the light of the

rule that a statute, susceptible of two constructions, should be construed in such a way as not to raise doubts as to its constitutionality. *Panama R. R. Co. v. Johnson* (1924), 264 U. S. 375; *Michaelson v. United States* (1924), 266 U. S. 42. As will be pointed out hereafter, to interpret this statute in the manner in which it has been interpreted below would raise grave doubts as to its constitutionality.

Interpreting these statutes as not forbidding injunctive relief in *all* cases we may pass to a discussion of whether extraordinary and exceptional circumstances exist in this case such as would render them inapplicable.

Point B

Section 21(d) of the Agricutural Adjustment Act Deprives Petitioner of Its Remedy at Law.

Section 21(d)* forbids the return of any taxes illegally collected under the Act unless the taxpayer proves, to the satisfaction of the Commissioner, that neither the taxpayer nor any person directly or indirectly under his control has, directly or indirectly, included the amount of the tax or any part thereof in the price of the commodity with respect to which it was imposed, or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner or included any part of such amount in the charge or fee

*Printed in the appendix.

for processing, and that the price paid by the taxpayer for the commodity was not reduced by any part of the tax paid. This, obviously, was an attempt to enact into law the economic theory that the burden of any tax imposed upon a manufacturer or processor is ultimately passed on to others. In speaking of a sales tax, Mr. Justice Stone and Mr. Justice Brandeis, dissenting in *Indian Motorcycle Company v. U. S.* (1931), 283 U. S. 570, 581, said:

> "In the Panhandle Oil Case, it was held that this shifting of the burden of a State tax from the seller to the buyer was sufficient to render the tax invalid where the buyer was an agency of the United States, and it was assumed that the burden of the sales tax involved was so inevitably passed on to the buyer as to require this result. With this assumption economists would not, I believe, generally agree. Many hold that whether the burden of any tax paid by the seller is actually passed on to the buyer depends upon considerations so various and complex as to preclude the assumption *a priori* that any particular tax at any particular time is passed on. In some conditions of the market, the burden remains with the seller, or even may be shifted back from the seller to the producer by the reduction of the producer's price, rather than forward to the consumer by an increase of the seller's price."

Likewise Mr. Justice Holmes speaking for the full Court in *Lash's Products Company v. U. S.* (1929), 278 U. S. 175, 176, said:

> "The phrase 'passed the tax on' is inaccurate, as obviously the tax is laid and remains on the

> manufacturer and on him alone. Heckman & Co. v. I. S. Dawes & Son Co., 12 F. (2d) 154. The purchaser does not pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all."

A sales tax is of course easily identifiable, or capable of identification, because levied on the sale of a given identifiable object and based upon the price at which the object is sold. If the question of whether such a tax has been "passed on" is so debatable, how much more so must be the case of a tax, such as a processing tax, which is carried as a part of the processor's expenses of operation? Even more complicated is the situation when, as here, the price paid to the producer and by the consumer fluctuates from day to day on competitive markets influenced by complex and manifold economic factors. However, whatever the merits of the theory *qua* theory, there can be no question that in order to make *factual proof* as to whether a processing tax has been "passed on" it must be shown that the price to the vendee has been increased *because* of the tax, or that the price paid to the producer has been reduced *because* of the tax. When a commodity, such as rice, is bought and sold on competitive markets such proof can be made only by proving what the market *would have been* had there been no tax. This Court held in *International Harvester Company v. Kentucky* (1914), 234 U. S. 216, 223, that the determination of what the market price of a given article would have been under different cir-

cumstances "is a problem that no human ingenuity could solve," and that:

> "The reason is not the general uncertainties of a jury trial but that the elements necessary to determine the imaginary ideal are uncertain both in nature and degree of effect to the acutest commercial mind. The very community, the intensity of whose wish relatively to its other competing desires determines the price that it would give, has to be supposed differently organized and subject to other influences than those under which it acts. * * *
>
> " * * * To compel them to guess on peril of indictment what the community would have given for them if the continually changing conditions were other than they are, to an uncertain extent; to divine prophetically what the reaction of only partially determinate facts would be upon the imaginations and desires of purchasers, is to exact gifts that mankind does not possess."

The situation involved in this case is many times more complex than that in the case just referred to. The manner in which the rice milling business is conducted is too complicated to set out in the confines of this brief but is fully set out in the petition and affidavits in support thereof. (R. 16-21, 60-75.) Because of the manner in which the rice milling business is, and must be, conducted it is impossible for a miller to tell accurately whether he has made a profit or loss with respect to the purchase, milling, and sale of a given lot of rough rice. (R. 62.) He can make a book figure with regard to any such lot

of rice by the use of averages, estimates, and arbitraries but that is all. He can only tell, at the end of the season, whether he has made a gain or loss on the season's operations. (R. 62.) The processing tax is levied upon each lot of rice based upon its weight at the time it reaches the mill and in order to recover the tax paid on such rice, under the provisions of Sec. 21(d), the miller must prove that he did not "pass on" the tax with respect to that particular lot of rice. Since he cannot even determine whether he made a profit or a loss on the particular transaction, it is manifestly impossible for him to know, much less prove, whether he has passed the tax on. However, even if he were able to prove exactly the amount of profit he made on each transaction, he would still have proved nothing but that. For all that he, or anyone else, could know he might have been able to sell the particular lot of rice for exactly the same price even if there had been no tax and he might have been able to purchase it for exactly the same price had there been no tax. On the face of it such matters are incapable of proof or even a sound guess. The miller cannot control the market on which he buys nor that on which he sells but he is compelled to buy and sell on those markets if he is to stay in the rice milling business. This lack of control of the markets by the miller is illustrated by the fact that the present cost of rough rice, plus operatings costs, including tax, is more than the miller can reasonably expect to get out of the products processed from it on the present market

for clean rice and rice products. (R. 62.) Manifestly under such circumstances no one can know, much less prove, whether the ultimate burden of the tax has fallen on the producer, the miller, or the purchaser. An analogous situation arises where a trademark has been infringed and the question arises as to how much of the sales price received by the infringer is attributable to the use of the trademark and how much to the intrinsic value of the object sold. In *Hamilton Shoe Company v. Wolf Bros.* (1916), 240 U. S. 251, 260, this Court held that in such a case it would, in the very nature of things, be impossible to ascertain to what extent the infringer could have effected sales and at what prices except for the use of the trademark. The same principle is applicable here—it is inherently impossible, in the circumstances of this case, for petitioner, or any other rice miller, to ascertain or prove to what extent he could have "effected sales and at what prices" except for the existence of the processing tax.

More than a thousand suits to enjoin the collection of these taxes have been filed throughout the United States. Insofar as petitioner knows the government has never yet been able to suggest *how* the proof required by the statute can be made. The government has satisfied itself with the simple assertion that proof *can* be made and with citing the opinion of this Court in *United States v. Jefferson Electric Manufacturing Company* (1934), 291 U. S. 386, 402, where the Court said:

"If the taxpayer has borne the burden of the tax, he can readily show it." * * *

The tax involved in that case was a tax upon the *sale* of a definite determinable object and amounted to 5% of the price for which the object was sold. The tax was not upon the manufacture, or the manufacture *and* sale. *Indian Motor Cycle Company v. United States* (1931), 283 U. S. 570, 574. In determining whether the payer of the tax collected it from the vendee or paid it himself there were no such complications as here exist. Indeed it was not suggested by anyone that the required proof could not be made; only that the taxpayer should not have to make it because the tax involved in the suit had been paid prior to the passage of the Act and at a time when it would not have been necessary for the payer to make such proof to procure refund. (P. 401.) The present case came before the Circuit Court of Appeals on a *final judgment dismissing the bill* on motion of the respondent which admitted the allegation that the proof required by the Act was impossible of being made. Nevertheless, and in the face of this, the Circuit Court of Appeals held that petitioner had "a" remedy at law (nothing being said as to the *adequacy* of it). Petitioner asserts that on the face of the Act, considering the *kind* of tax involved, an impossible burden of proof is placed upon petitioner. Petitioner further asserts that even if this were not true the Courts below should have enjoined the collection of the tax until such time as the courts could make a finding upon the

fact question of whether, under the peculiar conditions of the rice milling industry, the proof could be made. Respondent has not denied the allegations of petitioner's bill in this respect and under the circumstances the Court should not have dismissed the bill but was under the plain duty of preserving the *status quo* until such time as the facts upon which petitioner's constitutional rights depended could be fully determined. *cf Ohio Oil Company v. Conway* (1929), 279 U. S. 813.

Besides the lack of any adequate remedy at law this case presents several other grounds for equitable relief which have been held sufficient by this Court for the enjoining of the collection of a tax:

1. Multiplicity of suits (R. 23). *Wilson v. Illinois Southern Railroad* (1924), 263 U. S. 574; *Raymond v. Chicago Union Traction Company* (1907), 207 U. S. 20.

2. Congress has made no appropriation to repay any of these taxes if illegally collected, even if an adequate remedy at law were available, and in view of the tremendous amount involved it is improbable that any such appropriation will be made. (R. 24.) *Stewart Dry Goods Company v. Lewis* (1932), 287 U. S. 9.

3. The statute purporting to give the legal remedy has never been interpreted by the Courts and for this reason, if no other, petitioner's remedy at law cannot be said to be adequate. *Atlantic Coast Line v. Daughton* (1923), 262 U. S. 413. *cf Union Pacific Railroad v. Weld County* (1917), 247 U. S. 282.

4. The existence of the heavy civil and criminal penalties provided by Section 19(b) of the

Act*. (R. 15.) *Ex Parte Young* (1908), 209 U. S. 123, 146; *Wallace v. Hines* (1920), 253 U. S. 66.

POINT C

Unconstitutionality of R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act Under the Circumstances of This Case.

The argument is made that the District Courts and Circuit Courts of Appeals, not being constitutional courts, may be completely abolished by Congress and therefore Congress may place any desired restriction on their jurisdiction. The answer to this is that Congress has not abolished the District Courts nor the Circuit Courts of Appeals and not having abolished them the Congress may not constitutionally deprive one class of citizens of the right to equitable relief therein while at the same time and under similar circumstances other taxpayers are permitted to obtain such relief. Persons other than those subject to the processing tax from whom illegal taxes are sought to be collected may enjoin their collection under special and extraordinary circumstances. *Hill v. Wallace, supra; Miller v. Standard Nut Margarine Company, supra.* The right to protect one's property by invoking the aid of courts is as much a property right as the property itself, and to deny one class of citizens this right while granting it to others under similar circumstances

*The applicable penalty provisions are copied in Appendix C hereto.

is to deprive the class so denied of its property without due process of law. In *Truax v. Corrigan* (1921), 257 U. S. 312, which involved an Arizona statute which forbade the issuance of injunctions to protect property rights in cases of labor disputes the contention was made in support of the validity of the statute that the State could have completely abolished the lower courts and therefore the State could put such limitations as it desired upon their jurisdiction. This court nevertheless held the statute violative of the Fourteenth Amendment. Since the validity of exertions by the Federal Government of any of its delegated powers under the Fifth Amendment are to be measured by the same standards by which exertions of State power are measured under the Fourteenth Amendment, *Hamilton v. Kentucky Distilleries Co.* (1919), 251 U. S. 146, 156, it would seem clear that R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act are unconstitutional if they be construed as depriving courts of jurisdiction to issue injunctions to protect property rights in tax cases where the taxpayer is without remedy, or at least adequate remedy, at law.

In *Brinkerhoff-Faris Trust & Savings Company v. Hill* (1930), 281 U. S. 673, the Supreme Court of Missouri held that the trial court properly dismissed a bill seeking to enjoin the illegal assessment and collection of taxes on the ground that the taxpayer should first have pursued remedies before the State Board of Equalization. That court had

previously held that the State Board of Equalization was without jurisdiction to hear such complaints. The effect of the second decision was to deprive the petitioner of all right to test the validity of the tax. This court held that this amounted to a deprivation of petitioner's property without due process of law, Mr. Justice Brandeis saying:

> "Whether acting through its judiciary or through its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it."

This language is exactly applicable to the instant case and seems conclusive that if R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act be construed as forbidding injunctive relief in this case they are unconstitutional. See also *Graham & Foster v. Goodcell* (1931), 282 U. S. 409, 430, 431.

However absolute the power of Congress to destroy the jurisdiction of the inferior Federal Courts may seem, it is no more absolute than the apparent power of the State to arbitrarily exclude a foreign corporation from doing business within its borders. Nevertheless, this court has held, *Fidelity & Deposit Company v. Tafoya* (1926), 270 U. S. 426, that this "most absolute seeming" right was qualified and in some circumstances could become wrong, and that despite this apparently unqualified right the State could not impose an unconstitutional condition upon the foreign corporation coming into the

State. The exercise of Congress's right to limit the equity jurisdiction of the lower Federal Courts in the granting of injunctions in tax cases such as the present would be, as in the case just cited, for the purpose of securing a result forbidden by the Fifth Amendment, i. e., the deprivation of petitioner's property without due process of law, and may not stand.

There is still another reason why these statutes, if construed to absolutely and in all cases forbid injunctions, are unconstitutional. The Constitution, Article III, Section 1, vests the judicial power of the United States in one Supreme Court and such inferior courts as the Congress may from time to time ordain and establish. By Section 2 of Article III this judicial power extends to all cases in law and *equity* arising under the Constitution and laws of of the United States. Congress having established the District Courts and the Circuit Courts of Appeals, they, by virtue of the Constitution, at once become vested with judicial power in all cases arising under the Constitution and laws of the United States. These inferior courts derive their *judicial power* from the Constitution and not from any act of Congress. Congress may well have the power to regulate the procedure in these courts and to define their jurisdiction but Congress may not, it is submitted, deprive the courts of their *inherent judicial powers* which naturally follow from the Constitutional grant of those powers. This was expressly held in *Mickaelson v. United States*

(1924), 266 U. S. 42, 64, 65, 66, where the court said:

> *"If the statute now under review encroaches upon the equity jurisdiction intended by the Constitution, a grave constitutional question in respect of its validity would be presented;* and it, therefore, becomes our duty, as this Court has frequently said, to construe it 'if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score.' Panama R. R. Co. v. Johnson, 264 U. S. 375.
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> * * *
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> "But it is contended that the statute materially interferes with the inherent power of the courts and is therefore invalid. That the power to punish for contempts is inherent in all courts, has been many times decided and may be regarded as settled law. It is essential to the administration of justice. *The courts of the United States, when called into existence and vested with jurisdiction over any subject, at once become possessed of the power.* So far as the inferior Federal Courts are concerned, however, it is not beyond the authority of Congress (*Ex parte* Robinson, 19 Wall. 505, 510-511; Bessette v. W. B. Conkey Co., 194 U. S. 324, 326); *but the attributes which inhere in that power and are inseparable from it can neither be abrogated nor rendered practically inoperative.* That it may be regulated within limits not precisely defined may not be doubted. The statute now under review is of the latter character."

The power of courts of equity to issue injunctions to protect property rights, which could not otherwise be protected, is quite as inherent as the power

to punish for contempt. Conceding the authority of Congress to regulate or limit the use of the power, to an undefined extent, the case here presents no such situation, for to interpret the acts as depriving the courts of the power to issue injunctions in *every case* involving the collection of the tax, would be to completely destroy one of the inherent powers of the court which it possesses by virtue of Section 2 of Article III of the Constitution. For these reasons petitioner submits that R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act, so construed, are unconstitutional.

Point D

Unconstitutionality of Summary Proceedings for Collection of the Tax.

Under Sections 115 to 131, Title 26, U. S. C., as amended,* which are incorporated into the present Act, the Commissioner is authorized to collect the taxes, upon non-payment, by the fixing of liens on all of petitioner's property or by the levying of distraints against petitioner's property, including bank accounts, etc. The procedure is summary and under the distraint proceedings it would be entirely possible for the Commissioner to collect the full tax alleged to be owed by petitioner before petitioner could even know any proceedings had been started to collect the tax. All that would be necessary would be for the Commissioner or a deputy to walk

*Printed in Appendix B.

to petitioner's bank with the proper papers and distrain petitioner's money there deposited. The constitutionality of this summary procedure was upheld in *Phillips v. Commissioner* (1931), 283 U. S. 589, 596, upon the express ground that under existing statutes the taxpayer was given ample opportunity to ultimately test the liability for the tax in a court of law, the court saying:

> "Where only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, *if the opportunity given for the ultimate judicial determination of the liability is adequate.* Springer v. United States, 102 U. S. 586, 593; Scottish Union & National Ins. Co. v. Bowland, 196 U. S. 611, 631."

Under the facts of this case plaintiff is deprived of all legal remedy to recover the tax collected, if it be held illegal, because of the impossible burden of proof petitioner would have to meet in such a suit and, if R. S. §3224 and Sec. 21(a) be so construed, petitioner is deprived of the right to test the validity of the tax by a suit for an injunction. To permit the government to summarily seize petitioner's property under these circumstances would be to deprive petitioner of his property without due process of law and to argue this further would be to argue the obvious. See, in addition to the case cited, *Lipke v. Lederer* (1922), 259 U. S. 557, 562; *Carpenter v. Shaw* (1930), 280 U. S. 363, 369; *Ward v. Love County* (1920), 253 U. S. 17.

Point E

The Agricultural Adjustment Act, as Amended, Is Unconstitutional.

Petitioner asserts that the Agricultural Adjustment Act, as amended, is unconstitutional for the following reasons:

1. The Act, though in form a revenue measure, is in fact an attempt to regulate the price at which petitioner buys and sells rice in intrastate commerce.

2. The Act is an attempt to control the production of agricultural commodities within the several States.

3. The taxes are not levied for the general welfare or for a public purpose.

4. The Act, as amended, contains an unconstitutional delegation of legislative power to the Secretary of Agriculture.

Section 2(1) of the Act declares the policy of the Act to be "to establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. * * *" The rice miller is still compelled to pay the market price for all rice bought from farmers, and in addition thereto he is compelled to pay $1.62 per barrel

on the rice so purchased, which $1.62 in turn is given to the farmer under the guise of benefit payments. The object is to raise the price to the farmer and that object is obtained in part, at least, by compelling petitioner to pay at least $1.62 per barrel more for his rice than he would otherwise have to pay. Since the purchase is wholly within intrastate commerce, it is unquestionably beyond the power of the Federal Government to control. *Hill v. Wallace* (1922), 259 U. S. 44; *Schechter Poultry Corporation v. United States* (1935), 295 U. S. 495; *Butler v. United States of America* (C. C. A., First, 1935), 78 Fed. (2nd) 1, Congress being without power by direct regulation to fix or control these prices, it cannot achieve the same result by casting a law having that purpose into the form of a revenue measure. *Child Labor Tax Case* (1922), 259 U. S. 20; *Hill v. Wallace, supra; Hammer v. Dagenhart* (1918), 247 U. S. 251.

Secondly, the Act attempts to control and reduce the production of agricultural commodities by farmers within the several States. In Section 8(1) the Secretary of Agriculture is authorized

> "to provide for reduction in the acreage or reduction in the production for market, or both, of any basic agricultural commodity, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith or upon that part of the production of any basic agricultural commodity required for domestic consumption, such amounts as the Secretary deems fair and reasonable." * * *

Of all industries, agriculture is the most essentially intrastate, and this has long been recognized by this Court. *Kidd v. Pearson* (1888), 128 U. S. 1, 21; *Heisler v. Thomas Colliery Company* (1922), 260 U. S. 245, 259; *Industrial Association v. United States* (1925), 268 U. S. 64, 82. Since the Act has for its purpose the regulation of this purely intrastate matter, *Schecter Poultry Corporation v. U. S., supra; Hill v. Wallace, supra,* the tax levied to effectuate this purpose must fall. *Child Labor Tax Case, supra; Railroad Retirement Board v. Alton Railroad Company* (1935), 295 U. S. 330; *Gibbons v. Ogden* (1824), 9 Wheat. 1, 199.

The fact that the arrangements between the Secretary of Agriculture and the individual farmers by which the latter reduce their acreage and the former makes benefit payments to them therefor out of the taxes collected from processors does not make the Act in purpose and effect any the less a regulation of agriculture within the State. *cf. Schecter Poultry Corporation v. U. S., supra,* p. 529. The arrangements are made by virtue of, and under authority of, the law, and it is idle to say that the act of the farmer in reducing his acreage pursuant to the contract with the Secretary of Agriculture is voluntary when the farmer knows that if he does not execute such agreement he is subjected to the penalty of having to sell his commodity at the same price at which other farmers sell it minus the substantial amount received by the other farmers by way of benefit payments. (R. 41.) Further-

more, without the tax provisions in the Act (which are certainly not voluntary) the enormous benefit funds with which to coerce the farmers into making the "voluntary" agreements would not be available and the result sought to be achieved by Congress, to wit, the regulation of agriculture within the several States, could not be accomplished.

Third, it seems plain that these taxes are not levied for the general welfare or a public purpose, as required by Article I, Section 8, Clause 1, of the Constitution. It is plain from the face of the Act that it is an attempt to redistribute purchasing power and the taxes provided by the Act are to be used solely for that purpose. Under Section 12(b) of the Act it is provided that "* * * for the purpose of effectuating the declared policy of this title, a sum equal to the proceeds derived from *all taxes* imposed under this title is hereby appropriated to be available to the Secretary of Agriculture * * *." That a tax cannot be levied on A for the purpose of paying a bounty to B was long ago held by this court in *Loan Association v. Topeka* (1874), 87 Wall. 655, 663, where Mr. Justice Miller said:

> "The power to tax is, therefore, the strongest, the most pervading of all the powers of the government, reaching directly or indirectly to all classes of the people. It was said by Chief Justice Marshall, in the case of McCullough v. The State of Maryland, that the power to tax is the power to destroy. A striking instance of the truth of the proposition is seen in the fact that the existing tax of ten per cent imposed by the United States on the circula-

> tion of all other banks than the National banks, drove out of existence every State bank of circulation within a year or two after its passage. This power can as readily be employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited wealth and prosperity to the other, if there is no implied limitation of the uses for which the power may be exercised."

It has been urged that the tax is constitutional because a favorable readjustment of the farmers' economic condition will ultimately redound to the general public good. The same sort of an argument was made to the court in *Loan Association v. Topeka, supra,* but the court rejected it, saying at page 665:

> "If it be said that a benefit results to the local public of a town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the innkeeper, the banker, the builder, the steamboat owner are equally promoters of the public good, and equally deserving the aid of the citizens by forced contributions."

While many assert that our economic difficulties are attributable to the condition of the farmer, there are still others who attribute it to the condition of the manufacturers or the condition of our export trade. If a tax can be levied to pay a bounty to farmers no reason is perceived why a tax may not be constitutionally levied to pay bounties to manu-

facturers or to those engaged in export trade or those engaged in any of our basic industries.

Finally, the processing tax provisions (Sec. 9),* even as altered by the amendment of August 24, 1935, violate Article I, Section 1, of the Constitution in making an unlawful delegation of legislative power to the Secretary of Agriculture. While the amendment provides for an initial processing tax on rice of 1c per pound (or $1.62 per barrel), nevertheless, under Sec. 9 the Secretary is given full power at any time to reduce, increase, modify or eliminate the tax, not by any practical standard, but largely by his opinion or prophecy of future prices and conditions. Where all such questions as to the duration of the tax and its increase or decrease or elimination are thus left to be resolved by the Secretary of Agriculture alone, it is clear that the Act still runs counter to Article I, Section 1, and is therefore unconstitutional. *Schechter Poultry Corporation, supra; Panama Refining Co. v. Ryan* (1934), 293 U. S. 388.

Point F

Certiorari Should Be Granted at the Present Time.

The opinion and order of the Circuit Court of Appeals, while interlocutory in form, in truth and in fact finally disposed of the case upon the merits. When it held that petitioner had a remedy at law and that the Courts below were without jurisdiction to grant the injunction prayed for (R. 98) the result

*Set out in Appendix D.

was a denial of all the relief sought by petitioner. Since the case will not come up for a hearing on its merits in the ordinary course of events until after the lapse of six or seven months the subject of the suit will be destroyed, the case become moot, and petitioner deprived of all right to have its case heard on the merits by any court unless this Court grants certiorari. If the order of the Circuit Court of Appeals is allowed to stand all the trial courts in the Circuit will feel bound thereby and will of necessity dismiss all bills filed in the Circuit for the purpose of testing the constitutionality of the taxes levied by the Agricultural Adjustment Act, as amended, with the result that not only your petitioner, but all other citizens living within the States of Texas, Louisiana, Mississippi, Alabama, Georgia and Florida be effectively deprived of any opportunity of testing the validity of this statute. There can be no question but that the constitutional questions raised in this case are grave and of national importance and this case involves an unprecedented situation. That the action of the Circuit Court of Appeals in denying the motion for an injunction to preserve the *status quo* pending appeal was wrong is plainly indicated by the fact that its action is contrary to the action of the Circuit Courts of Appeals for the Second, Sixth, Eighth, Ninth and Tenth Circuits, in granting injunctions in similar cases. It stands alone, unsupported by the decision of any other circuit. Its error can be corrected only by this Court now granting certiorari since there is

now before this Honorable Court a cause involving the constitutionality of the Agricultural Adjustment Act, which said cause is set for oral argument on December 9, 1935, and which will in the ordinary course of events be decided long prior to the time when this case would come up for hearing in the Circuit Court of Appeals. Without a writ of certiorari from this Honorable Court petitioner will have been compelled meanwhile to pay the taxes and if the Act be held unconstitutional its case would become moot and the taxes paid by it probably forever lost.

While the power to bring up a case pending in the Circuit Court of Appeals prior to final action in that Court is one to be sparingly exercised, the power nevertheless exists. *American Construction Company v. Jacksonville Railway* (1893), 148 U. S. 372. This Court said in *In Re Chetwood* (1897), 165 U. S. 443, 462:

> "And although, as observed in that case, this writ has not been issued as freely by this court as by the Court of Queen's Bench in England, and, prior to the Act of March 3, 1891, C. 517, 26 Stat. 826, had been ordinarily used as an auxiliary process merely, yet, whenever the circumstances imperatively demand that form of interposition the writ may be allowed, as at common law, to correct excesses of jurisdiction *and in furtherance of justice.*"

Likewise in *Harriman v. Northern Securities Company* (1905), 197 U. S. 244, 286, where the decree of the Circuit Court of Appeals actually dis-

posed of the entire case, although interlocutory in form, this Court granted certiorari. Other cases in which this Court has granted certiorari prior to a final decree in the Circuit Court of Appeals are *Denver v. New York Trust Company* (1913), 229 U. S. 123, 133; *Spiller v. Atchison, T. & S. F. Railway Company* (1920), 253 U. S. 117, 120; and *Dupont Powder Company v. Mastland* (1917), 244 U. S. 100. And in *The Three Friends* (1897), 166 U. S. 1, 49, this Court reviewed a decision of the District Court prior to action by the Circuit Court of Appeals on the appeal pending therein.

CONCLUSION

It is therefore respectfully submitted that this case is such as to call for the exercise by this Court of its supervisory powers. If the decisions of the District Court and the Circuit Court of Appeals stand, the result will be that petitioner will be deprived of its property without due process of law, and will be so deprived without any opportunity to test in the Courts the constitutional rights asserted in its bill of complaint. Unless this Honorable Court exercises such supervisory powers prior to the entry of a final decree in the Circuit Court of Appeals the subject matter of the suit will be destroyed, the suit become moot, and petitioner forever deprived of its constitutional rights. This Court should, therefore, review forthwith the decision of

the United States Circuit Court of Appeals for the Fifth Circuit and the decision of the District Court of the United States for the Eastern District of Louisiana.

Respectfully submitted,

By C. A. McCoy,
Attorney for Petitioner.

McCoy, King & Jones,
Of Counsel.

APPENDIX A

R. S. ART. 3224

No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

* * *

SECTION 21 OF AGRICULTURAL ADJUSTMENT ACT

SEC. 21 (*a*) No suit, action, or proceedings (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (*d*) of this section, may be reserved in the court's order.

(*b*) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regu-

lations of the Secretary with the approval of the President prior to the date of the adoption of this amendment, are hereby legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which have accrued and remain unpaid on the date of the adoption of this amendment shall be assessed and collected pursuant to Section 19, and to the provisions of law made applicable thereby. Nothing in this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary of Agriculture or of the President done or made prior to the date of the adoption of this amendment.

(*c*) The making of rental and benefit payments under this title, prior to the date of the adoption of this amendment, as determined, prescribed, proclaimed and made effective by the proclamations of the Secretary of Agriculture or of the President or by regulations of the Secretary, and the initiation, if formally approved by the Secretary of Agriculture prior to such date of adjustment programs under Section 8 (1) of this title, and the making of agreements with producers prior to such date, and the adoption of other voluntary methods prior to such date, by the Secretary of Agriculture under this title, and rental and benefit payments made pursuant thereto, are hereby legalized and ratified, and the making of all such agreements and payments, the initiation of such programs, and the adoption of all such methods prior to such date are hereby legalized, ratified, and confirmed as fully to all intents and purposes as if each such agreement, program, method, and payment had been specifically author-

ized and made effective and the rate and amount thereof fixed specifically by prior Act of Congress.

(*d*) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considerd by the court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (*a*) or (*c*) of Section 15, Section 16, or Section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of Section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by rea-

son of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be refunded or credited to any person (not a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (*a*) and (*b*) of Section 16, had the tax terminated by proclamation pursuant to the provisions of Section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish to the satisfaction of the Commissioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held

invalid a claim therefor (conforming to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2) no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, or jurisdiction of such courts based upon the amount in controversy.

(*e*) In connection with the establishment, by any claimant, of the facts required to be established in subsection (*d*) of this section, the Commissioner of Internal Revenue is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda, relative to any matter affecting the findings to be made by the Commissioner pursuant to subsection (*d*) of this section, to require the attendance of the claimant or of any officer or employee of the claimant, or the attendance of any other person having knowledge in the premises, and to take, or cause to be taken, his testimony with reference to any such matter, with power to administer oaths to such person or persons. It shall be lawful for the Commissioner, or any collector designated

by him, to summon witnesses on behalf of the United States or of any claimant to appear before the Commissioner, or before any person designated by him, at a time and place named in the summons, and to produce such books, papers, correspondence, memoranda, or other records as the Commissioner may deem relevant or material, and to give testimony or answer interrogatories, under oath, relating to any matter affecting the findings to be made by the Commissioner pursuant to subsection (*d*) of this section. The provisions of Revised Statutes 3174 and of Revised Statutes 3175 shall be applicable with respect to any summons issued pursuant to the provisions of this subsection. Any witness summoned under this subsection shall be paid, by the party on whose behalf such witness was summoned, the same fees and mileage as are paid witnesses in the courts of the United States. All information obtained by the Commissioner pursuant to this subsection shall be available to the Secretary of Agriculture upon written request therefor. Such information shall be kept confidential by all officers and employees of the Department of Agriculture, and any such officer or employee who violates this requirement shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both, and shall be removed from office.

(*f*) No refund, credit, or abatement shall be made or allowed of the amount of any tax, under Section 15, or Section 17, unless, within one year after the right to such refund, credit, or abatement has accrued, a claim for such refund, credit, or abatement (conforming to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled to such refund, credit, or abatement, except that if the right to any such refund, credit, or abatement accrued prior to the date of the adoption of this amendment, then

such one-year period shall be computed from the date of this amendment. No interest shall be allowed or paid, or included in any judgment, with respect to any such claim for refund or credit.

(*g*) The provisions of Section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax, or any refund or credit authorized by subsection (*a*) or (*c*) of Section 15, Section 16, or Section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of Section 317 of the Tariff Act of 1930.

APPENDIX B

Provisions of Title 26, U. S. C. Dealing With Collection of Taxes By Distraint

Sec. 115. *Lien for Taxes.* (*a*) If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. (Balance of Section deals with recording of lien and giving of releases.) (R. S. Sec. 3186; Mar. 1, 1879, C. 125, Sec. 3, 20 Stat. 331; Mar. 4, 1913, C. 166, 37 Stat. 1016; Feb. 26, 1925, C. 344, 43 Stat. 994; May 29, 1928, 8 a.m., C. 852, Title IV, Sec. 613, 45 Stat.)

116. *Distraint for Taxes.* If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with 5 per centum additional thereto, and interest as aforesaid, by distraint and sale, in the manner hereafter provided, of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid. (Balance of Section deals with exempt property.) (R. S. Sec. 3187; June 2, 1924, 4:01 p.m., C. 234, Sec. 1016, 43 Stat. 343.)

117. *Same; Levy.* In such case of neglect or refusal, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property

and rights to property, except such as are exempt by Section 116 of this title, belonging to such person, or on which the said lien exists, for the payment of the sum due as aforesaid, with interest and penalty for nonpayment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy. (R. S. Sec. 3188.)

118. *Same; Exhibit of Evidences Relating to Property.* All persons, and officers of companies or corporations, are required, on demand of a collector or deputy collector about to distrain or having distrained on any property, or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the tax due as aforesaid. (R. S. Sec. 3189.)

119. *Same; Proceedings On.* When distraint is made, as aforesaid, the officer charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the officer making such distraint, shall be left with the owner or possessor or such goods or effects, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded, and the time and place of sale; and the said officer shall forthwith cause a notification to be published in some newspaper within the county wherein said distraint is made, if a newspaper is published in said county, or to be publicly posted at the post office, if there be one within five miles nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Such notice shall specify the articles distrained, and the time and place for the sale thereof. Such time shall not be less than ten nor more than twenty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notice as herein

provided, and the place proposed for the sale shall not be more than five miles distant from the place of making such distraint. Said sale may be adjourned from time to time by said officer, if he deems it advisable, but not for a time to exceed in all thirty days. (R. S. Sec. 3190.)

120. *Same; Sale of Property Subject to Tax.* When property subject to tax, but upon which the tax has not been paid, is seized upon distraint and sold, the amount of such tax shall, after deducting the expenses of such sale, be first appropriated out of the proceeds thereof to the payment of the tax. And if no assessment of such tax has been made upon such property, the collector shall make a return thereof in the form required by law, and the Commissioner of Internal Revenue shall assess the tax thereon. (R. S. Sec. 3191.)

121. *Same; Sale of Property; Purchase for United States.* When any personal property is advertised for sale under distraint as aforesaid, the officer making the seizure shall proceed to sell such property at a public auction, offering the same at a minimum price, including the expenses of making the levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the officer conducting the sale may declare the same to be purchased by him for the United States. The property so purchased may be sold by the collector within whose district the sale was made under such regulations as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. The collector shall render to the Commissioner a distinct account of all charges incurred in such sales, and, in case of resale, shall pay into the Treasury the proceeds as provided in Section 3210 of the Revised Statutes, as amended (R. S. 3192, as amended May 10, 1934, 11:40 a.m., C. 277, Sec. 508, 48 Stat.)

122. *Same; Restoration of Property on Payment Before Sale.* (This merely provides for return of property distrained upon if tax is paid prior to sale.) (R. S. 3193.)

123. *Same; Effect of Certificate of Sale.* In all cases of sale, as aforesaid, the certificate of such sale shall be prima-facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale, and shall transfer to the purchaser all right, title, and interest of such delinquent in and to the property sold; and where such property consists of stocks, said certificate shall be notice, when received, to any corporation, company, or association of said transfer, and shall be authority to such corporation, company, or association to record the same on their books and records in the same manner as if transferred or assigned by the party holding the same, in lieu of any original or prior certificates, which shall be void, whether canceled or not. And said certificates, where the subject of sale is securities or other evidences of debt, shall be good and valid receipts to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt. (R. S. Sec. 3194.)

124. *Same; When Property Not Divisible.* (This deals with special case of indivisible property and allows sale of the whole even though its value exceeds amount of the tax. (R. S. Sec. 3195; June 2, 1924, 4:01 p.m., C. 234, Sec. 1031 (*a*), 43 Stat. 351; re-enacted Jan. 26, 1926, 10:25 a.m., C. 27, Title XI, Sec. 1128(a), 144 Stat. 124.)

125. *Real Estate; Sale to Satisfy Taxes.* When goods, chattels, or effects sufficient to satisfy the taxes imposed upon any person are not found by the collector or deputy collector, he is authorized to collect the same by seizure and sale of real estate. (R. S. Sec. 3196.)

126. *Same; Proceedings.* The officer making the seizure mentioned in Section 125 of this title shall give notice to the person whose estate it is proposed to sell by giving him in hand, or leaving at his last or usual place of abode, if he has any such within the collection district where said estate is situated, a notice, in writing, stating what particular estate is to be sold, describing the same with reasonable certainty, and the time when and place where said officer proposes to sell the same; which time shall not be less than twenty nor more than forty days from the time of giving said notice. The said officer shall also cause a notification to the same effect to be published in some newspaper within the county where such seizure is made, if any such there be, and shall also cause a like notice to be posted at the postoffice nearest to the estate seized, and in two other public places within the county; and the place of said sale shall not be more than five miles distant from the estate seized, except by special order of the Commissioner of Internal Revenue. At the time and place appointed, the officer making such seizure shall proceed to sell the said estate at public auction, offering the same at a minimum price, including the expense of making such levy, and all charges for advertising and an officer's fee of $10. (Balance of section deals with details of conducting sale.) (R. S. Sec. 3197; Feb. 27, 1877, C. 69, Sec. 1, 19 Stat. 248; Mar. 1, 1879, C. 125, Sec. 3, 20 Stat. 331; May 28, 1896, C. 252, 29 Stat. 179; Mar. 3, 1905, C. 1483, Sec. 1, 33 Stat. 1207; July 19, 1919, C. 24, Sec. 1, 41 Stat. 209.)

127. *Same; Certificate of Purchase; Deed.* (This provides for execution of deed by the collector to the purchaser.) (R. S. Sec. 3198.)

128. *Same; Deed Prima-Facie Evidence.* The deed of sale given in pursuance of Section 127 of this title shall be prima-facie evidence of the facts therein stated; and if the proceedings of the officer as set

forth have been substantially in accordance with the provisions of law, shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real estate thus sold at the time the lien of the United States attached thereto. (R. S. Sec. 3199.)

129. *Same; Place of Seizure (and Sale).* Any collector or deputy collector may, for the collection of taxes imposed upon any person, and committed to him for collection, seize and sell any of the property, real or personal (except property exempt from distraint and sale, under Section 3187 of the Revised Statutes, or any right or interest therein, of such person situated in any other collection district within the State in which such officer resides, notwithstanding the provisions of Section 3209 of the Revised Statutes; and his proceedings in relation thereto shall have the same effect as if the same were had in his proper collection district. (R. S. Sec. 3200; amended Jan. 26, 1926, 11:25 a.m., Title XI, Sec. 1129, 44 Stat. 125.)

130. *Same; Redemption Prior to Sale.* (This provides for return of property seized on payment of tax.) (R. S. Sec. 3201.)

131. *Same; Redemption After Sale.* (This provides for redemption after sale by payment to purchaser, within one year after the sale, of the purchase price with interest at 20% per annum.) (R. S. 3202.)

APPENDIX C

Penalty Provisions

Section 19(b) of the Agricultural Adjustment Act:

> "Sec 19. * * * (*b*) All provisions of law, including penalties, applicable with respect to the taxes imposed by Section 600 of the Revenue Act of 1926, and the provisions of Section 626 of the Revenue Act of 1932, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable in respect of taxes imposed by this title: * * * ."

Section 1114 of 1926 Revenue Act, applicable with respect to taxes imposed by Section 600 of that Act:

> "Sec. 1114. (*a*) Any person required under this Act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act, who wilfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisioned for not more than one year, or both, together with the costs of prosecution.
>
> "(*b*) Any person required under this Act to collect, account for and pay over any tax imposed by this Act, who willfully fails to collect or truthfully account for and pay over such tax,

and any person who willfully attempts in any manner to evade or defeat any tax imposed by this Act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

"(c) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal-revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

"(d) Any person who willfully fails to pay, collect, or truthfully account for and pay over, any tax imposed by Titles IV, V, VI, VII, VIII, and IX, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of Section 3176 of the Revised Statutes, as amended, or for any offense for which a penalty has been recovered under Section 3256 of the Revised Statutes.

"(*e*) Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

"(*f*) The term 'person' as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs."

APPENDIX D

PROCESSING TAX PROVISIONS OF AGRICULTURAL ADJUSTMENT ACT, AS AMENDED, AS APPLIED TO RICE

SEC. 9. (*a*) To obtain revenue for extraordinary expenses incurred by reason of the national economic emergency, there shall be levied processing taxes as hereinafter provided. When the Secretary of Agriculture determines that any one or more payments authorized to be made under Section 8 are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation; except that * * * (2) in the case of rice, the Secretary of Agriculture shall, before April 1, 1935, proclaim that rental or benefit payments are to be made with respect thereto, and the processing tax shall be in effect on and after April 1, 1935. * * * In the case of rice, the period from August 1 to July 31, both inclusive, shall be considered to be the marketing year. The processing tax shall be levied, assessed, and collected upon the first domestic processing of the commodity, whether of domestic production or imported, and shall be paid by the processor. The rate of tax shall conform to the requirements of subsection (*b*). Such rate shall be determined by the Secretary of Agriculture as of the date the tax first takes effect, and the rate so determined shall, at such intervals as the Secretary finds necessary to effectuate the declared policy, be adjusted by him to conform to such requirements. The processing tax shall terminate at the end of the marketing year current at the time the Secretary proclaims that all payments authorized under Section 8 which are in effect are to be discontinued with

respect to such commodity. The marketing year for each commodity shall be ascertained and prescribed by regulations of the Secretary of Agriculture: * * *

(*b*) (1) The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, plus such percentage of such difference, not to exceed 20 per centum, as the Secretary of Agriculture may determine will result in the collection, in any marketing year with respect to which such rate of tax may be in effect pursuant to the provisions of this title, of an amount of tax equal to (A) the amount of credits or refunds which he estimates will be allowed or made during such period pursuant to section 15(c) with respect to the commodity (B) the amount of tax which he estimates would have been collected during such period upon all processing of such commodity which are exempt from tax by reason of the fact that such processings are done by or for a State, or a political subdivision or an institution thereof, had such processings been subject to tax. If, prior to the time the tax takes effect, or at any time thereafter, the Secretary has reason to believe that the tax at such rate, or at the then existing rate, on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, will cause or is causing such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depression of the farm price of the commodity, then the Secretary shall cause an appropriate investigation to be made, and afford due notice and opportunity for hearing to interested parties. If thereupon the Secretary determines and proclaims that any such result will oc-

cur or is occurring, then the processing tax on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be at such lower rate or rates as he determines and proclaims will prevent such accumulation of surplus stocks and depression of the farm price of the commodity, and the tax shall remain during its effective period at such lower rate until the Secretary, after due notice and opportunity for hearing to interested parties, determines and proclaims that an increase in the rate of such tax will not cause such accumulation of surplus stocks or depression of the farm price of the commodity. Thereafter the processing tax shall be at the highest rate which the Secretary determines will not cause such accumulation of surplus stocks or depression of the farm price of the commodity, but it shall not be higher than the rate provided in the first sentence of this paragraph. * * *

SPECIFIC TAX RATE—RICE

(3) For the period from April 1, 1935, to July 31, 1936, both inclusive, the processing tax with respect to rice shall be levied, assessed, collected, and paid at the rate of 1 cent per pound of rough rice. * * *

(6) (A) Any rate of tax which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6) on the processing of any commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be decreased (including a decrease to zero) in accordance with the formulae, standards, and requirements of paragraph (1) of

this subsection, in order to prevent such reduction in the quantity of such commodity or the products thereof domestically consumed as will result in the accumulation of surplus stocks of such commodity or the products thereof or in the depression of the farm price of the commodity, and shall thereafter be increased in accordance with the provisions of paragraph (1) of this subsection but subject to the provisions of subdivision (B) of this paragraph (6).

(B) If the average farm price of any commodity, the rate of tax on the processing of which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or is established pursuant to this paragraph (6), during any period of twelve successive months ending after July 1, 1935, consisting of the first ten months of any marketing year and the last two months of the preceding marketing year—

(*i*) is equal to, or exceeds by 10 per centum or less, the fair exchange value thereof, or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 20 per centum of the fair exchange value thereof.

(*ii*) exceeds by more than 10 per centum, but not more than 20 per centum, the fair exchange value thereof, the rate of such tax shall subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 15 per centum of the fair exchange value thereof.

(*iii*) exceeds by more than 20 per centum the fair exchange value thereof, the rate of such

tax shall (subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 10 per centum of the fair exchange value thereof.

(C) Any rate of tax which has been adjusted pursuant to this paragraph (6) shall remain at such adjusted rate unless further adjusted or terminated pursuant to this paragraph (6), until December 31, 1937, or until July 31, 1936, in the case of rice.

(D) In accordance with the formulae, standards, and requirements prescribed in this title, any rate of tax prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6) shall be increased.

(E) Any tax, the rate of which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6), shall terminate pursuant to proclamation as provided in section 9 (a) of this title or pursuant to section 13 of this title. Any such tax with respect to any basic commodity which terminates pursuant to proclamation as provided in section 9 (a) of this title shall again become effective at the rate prescribed in paragraph (2), (3), (4) or (5) of this subsection, subject however, to the provisions of subdivisions (A) and (B) of this paragraph (6), from the beginning of the marketing year for such commodity next following the date of a new proclamation by the Secretary as provided in section 9 (a) of this title, if such marketing year begins prior to December 31, 1937, or prior to July 31, 1936, in the case of rice, and shall remain at such rate until altered or terminated pursuant to the provisions of section 9 or terminated pursuant to section 13 of this title. * * *

(G) If the applicability to any person or circumstances of any tax, the rate of which is fixed in pursuance of this paragraph (6), is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be levied, assessed, collected, and paid (in lieu of all rates of tax fixed in pursuance of this paragraph (6) with respect to all tax liabilities incurred under this title on or after the effective date of each of the rates of tax fixed in pursuance of this paragraph (6)), rates of tax fixed under paragraph (2), (3), (4) or (5), and such rates shall be in effect (unless the particular tax is terminated pursuant to proclamation, as provided in section 9 (a) or pursuant to section (13) until altered by Act of Congress; except that, for any period prior to the effective date of such holding of invalidity, the amount of tax which represents the difference between the tax at the rate fixed in pursuance of this paragraph (6) and the tax at the rate fixed under paragraphs (2), (3), (4) and (5) shall not be levied, assessed, collected, or paid.

RICE—SPECIAL RULE

(7) In the case of rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to a processor, except that, where the producer processes his own rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to the place of processing. * * *

(*c*) For the purposes of part 2 of this title, the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period

specified in section 2; and, in the case of all commodities where the base period is the pre-war period, August 1909 to July 1914, will also reflect interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during said base period; and the current average farm price and the fair exchange value shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture. The rate of tax upon the processing of any commodity, in effect on the date on which this amendment is adopted, shall not be affected by the adoption of this amendment and shall not be required to be adjusted or altered, unless the Secretary of Agriculture finds that it is necessary to adjust or alter any such rate pursuant to section 9 (a) of this title.

(*d*) As used in part 2 of this title— * * *

(7) In the case of rice—

(A) The term "rough rice" means rice in that condition which is usual and customary when delivered by the producer to a processor.

(B) The term "processing" means the cleaning, shelling, milling (including custom milling for toll as well as commercial milling), grinding, rolling, or other processing (except grinding or cracking by or for the producer thereof for feed for his own livestock, cleaning by or directly for a producer for seed purposes, and drying) of rough rice; and in the case of rough rice with respect to which a tax-payment warrant has been previously issued or applied for by application then pending, the term "processing" means any one of the above mentioned processings or any preparation or handling in connection with the sale or other disposition thereof.

(C) The term "co-operating producer" means

any person (including any share-tenant or share-cropper) whom the Secretary of Agriculture finds to be willing to participate in the 1935 production-adjustment program for rice.

(D) The term "processor," as used in subsection (b-1) of section 15 of this title, means any person (including a co-operative association of producers) engaged in the processing of rice on a commercial basis (including custom milling for toll as well as commercial milling).

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Supreme Court of the United States

OCTOBER TERM, 1935

No. 387

NOBLE-TROTTER RICE MILLING CO., INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND SUPPORTING BRIEF THEREON.

C. A. McCOY,
Attorney for Petitioner.

McCOY, KING & JONES,
Lake Charles, La.,
Of Counsel.

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United States Code, Title 26, Secs. 115-131 ..... 18, 19, 36
United States Code, Title 28, Sec. 347 16

No.....

IN THE

Supreme Court of the United States

NOBLE-TROTTER RICE MILLING CO., INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

PETITION OF NOBLE-TROTTER RICE MILLING CO., INC., FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

MAY IT PLEASE THE COURT:

The petitioner, Noble-Trotter Rice Milling Co., Inc., respectfully prays for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, to hear this cause prior to its decision by the Circuit Court of Appeals and to review the decision of the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, entered in this cause on October 28, 1935, and further to review the decision of the Circuit Court of Appeals in denying

the application of petitioner for a preliminary injunction pending the appeal of said cause in said Circuit Court of Appeals. Petitioner respectfully shows this Honorable Court:

1.

Questions Presented.

(*a*) Is the so-called Agricultural Adjustment Act, as amended on August 24, 1935, constitutional?

(*b*) Does Section 21(d) of said Act deprive petitioner of an adequate remedy at law?

(*c*) Does Article 3224 R. S. or Section 21(a) of said Act forbid the granting of an injunction when petitioner has no adequate remedy at law?

(*d*) If Section 21(a) of said Act forbids an injunction in a case where petitioner has no adequate remedy at law, is said Section 21(a) constitutional?

(*e*) If Congress may constitutionally deprive the Courts of jurisdiction to enjoin the collection of illegal taxes and at the same time deprive the taxpayer of any legal remedy to recover such illegal taxes, may the summary proceedings provided in Sections 115 to 131, Title 26, U. S. C., as amended, be constitutionally employed for the collection of such illegal taxes?

2.

Summary Statement of the Matter Involved.

Petitioner owns and operates a rice mill at Lake Charles, Louisiana. Under the Act of the 73rd

Congress, P. L. No. 10, approved on May 12, 1933, as amended, known as the Agricultural Adjustment Act, there is imposed a processing tax of 1c per pound upon the first processing or milling of rough rice. The amount of tax shown to be due by petitioner in its return filed for the month of September, 1935, was $17,331.90. This tax was due and payable to respondent on October 30, 1935. October 28, 1935, petitioner filed its bill in the District Court to restrain the collection of this tax and any tax which might become due in subsequent months on the ground that said tax was unconstitutional, that petitioner was without adequate remedy at law, and that without such injunction it would be irreparably damaged. (R. 2.) Respondent filed a motion to dismiss on the ground that the Court had been deprived of jurisdiction by Art. 3224, U. S. R. S., and Section 21(a) of the Agricultural Adjustment Act. (R. 54.) Seven similar suits were consolidated with this by Court order (R. 58) and the Court heard at the same time petitioner's motion for a preliminary injunction and respondent's motion to dismiss for want of jurisdiction. At the hearing petitioner introduced two affidavits in support of its allegation that, due to the peculiar nature of the rice business, it was impossible to accurately determine the profit or loss resulting from the processing and sale of any given lot of rice. (R. 60, 65.) The affidavits further showed that it is impossible to prove what part, if any, of the processing tax is passed forward to the consumer or back to the producer or what part is borne by the miller. Respondent intro-

duced the joint affidavit of three deputy Internal Revenue Collectors which affidavit was inconsistent with the affidavits of petitioner in only one respect. (R. 75.) At the conclusion of the hearing the Court denied petitioner's motion for a preliminary injunction and granted respondent's motion to dismiss upon the ground that the Court was deprived of jurisdiction by Article 3224, U. S. R. S., and Section 21(a) of said Act. (R. 79.) Said Article 3224* and Section 21(a)* forbid the granting of an injunction to restrain the collection of any tax, and of the processing tax here involved, respectively. Under Section 21(d)* of said Agricultural Adjustment Act it is provided that no tax collected under the Act may be recovered except upon proof satisfactory to the Commissioner of Internal Revenue that the payer of the tax had not, directly or indirectly, included such amount in the price of the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee of the commodity, and that the price paid by the taxpayer for the unprocessed commodity was not reduced by any part of such amount. The bill below, and supporting affidavits, show the manner in which rough rice is milled and the manner in which it is sold, and that from any given lot of rough rice many different grades and qualities of clean rice are produced. The usual and customary method of selling rice is to sell it on samples made up of mixtures of different lots of clean rice which in turn are derived from differ-

*Set out in Appendix to Brief.

ent lots of rough rice purchased from different parties, and when an order for clean rice is received, based on any particular sample, the miller fills the order of clean rice from a mixture from various lots of clean rice. Many sales are made during a given season made up of various mixtures of clean rice, and there is practically an unlimited combination of lots of clean rice that go into the various sales. There is no way of accurately allocating to the various lots of rice going into any given mix any definite part of the price received for the entire mix. (R. 16-21.) Petitioner's sworn bill and affidavits showed that for these reasons it is impossible for petitioner or any other rice miller to make the proof required for recovery of the tax paid, if the law be held unconstitutional, even if it were otherwise possible to make such proof. Petitioner's sworn bill alleged that unless the injunction prayed for was granted: (1) It would be without adequate remedy at law to recover the taxes paid in the event they be held unconstitutional; (2) if any legal remedy existed, it would entail a multiplicity of suits; (3) it would become subject to heavy civil and criminal penalties and (4) it would suffer great and irreparable damages for specific reasons set out. (R. 15, 16, 23.) Respondent filed no answer denying any of these allegations. Petitioner alleged below that the said Section 21(d) did not apply to its suit because petitioner had no adequate remedy at law. It alleged further that, if said section be interpreted as prohibiting the injunction prayed for, the said

section, together with the other provisions of the Act, violated the Fifth Amendment to the Constitution in that said unconstitutional taxes would be collected from petitioner and petitioner would have no remedy by which it could recover said taxes, if they were unlawful, and thereby petitioner would be deprived of the right to test the constitutionality of the taxes. (R. 23.) Petitioner offered to give such security as the Court might require if the injunction were granted. (R. 24.) There was neither pleading nor proof that the granting of the injunction would in any wise injure respondent if the tax were ultimately held constitutional.

On October 29, 1935, petitioner was allowed an appeal. (R. 81.) On the same day petitioner applied for, and was denied, an injunction pending appeal. (R. 80.) The record was duly filed in the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, on November 4, 1935, being Cause No. 7951 on the docket of that Court. On November 4, 1935, petitioner applied to said Circuit Court of Appeals for an injunction against the respondent pending the hearing of its appeal (R. 87), but the Circuit Court of Appeals on November 5, 1935, denied the application. (R. 98.)

3.

Reasons Relied Upon for the Allowance of the Writ.

This case, with its companion cases, presents an entirely unprecedented situation. It presents questions of gravity and importance. It involves the

constitutionality of an important Federal statute and the rulings of the Court below, insofar as they may be taken to have held the statute constitutional, are probably in conflict with the decisions of this Court in *Loan Association v. Topeka* (1874), 20 Wall. 655; *Child Labor Tax Case* (1922), 259 U. S. 20; *Hill v. Wallace* (1922), 259 U. S. 44; *Hammer v. Dagenhart* (1918), 247 U. S. 251; and *Schechter Poultry Corporation v. United States* (1935), 295 U. S. 495; and contrary to the decision of the United States Circuit Court of Appeals for the Second Circuit in *Butler et al. v. United States* (1935), 78 Fed. (2nd) 1. The District Court and the Circuit Court of Appeals in holding that Congress may constitutionally forbid the granting of an injunction against summary collection of taxes, while at the same time depriving the taxpayer of any adequate remedy at law, presents a constitutional question of great importance never decided by this Court and a question which should be definitely decided. Though this question has never been *directly* decided by this Court, the decisions of the Courts below probably conflict with the decisions of this Honorable Court in *Truax v. Corrigan* (1921), 257 U. S. 312; *Brinkerhoff-Faris Trust & Savings Company v. Hill* (1930), 281 U. S. 673, and inferentially *Graham & Foster v. Goodcell* (1931), 282 U. S. 409, 430, 431; *Michaelson v. United States* (1924), 266 U. S. 42, 64, 65, 66, and *Phillips v. Commissioner* (1931), 283 U. S. 589, 596. This holding was particularly erroneous when the respondent was, at the same time,

authorized to collect the tax by summary proceedings under Sections 115 to 131, Title 26, U. S. C., as amended.

In holding that Article 3224, U. S. R. S., and Section 21(a) of said Act deprive the courts of jurisdiction to grant an injunction under the unusual and extraordinary circumstances of this case, the courts below decided an important question of Federal law in a way probably in conflict with the decisions of this Honorable Court in *Hill v. Wallace* (1922), 259 U. S. 44, and *Miller, Collector, v. Standard Nut Margarine Company* (1932), 284 U. S. 498, and in conflict with the unreported decisions of the Second, Sixth, Eighth, Ninth and Tenth Circuit Courts of Appeals, which granted injunctions pending appeal in cases similar to the present case.

The District Court, in refusing to grant petitioner's motion for a preliminary injunction, and in refusing to grant petitioner's motion for an injunction pending appeal, and the Circuit Court of Appeals in refusing to grant petitioner's motion for an injunction pending appeal, have so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Honorable Court's power of supervision and this action of the courts below is probably in conflict with the decision of this Honorable Court in *Ohio Oil Company v. Conway* (1929), 279 U. S. 813, and is in conflict with the holdings of every other Circuit Court of Appeals which has passed upon this question, to wit, the Circuit Courts of Appeals for the Second, Sixth, Eighth, Ninth and Tenth Circuits.

4.

Reasons Relied Upon for the Allowance of Writ Before Action on the Merits by the Circuit Court of Appeals.

This case, with its companion cases, presents a situation unparalleled in American history. Under the provisions of Sections 115 to 131, Title 26, U. S. C., as amended, the respondent is armed with weapons for the immediate forcible collection of the tax from petitioner, and those similarly situated, which they are powerless to resist. The District Court and Circuit Court of Appeals below have, contrary to the decisions of all other Circuit Courts of Appeals passing upon the question, held themselves deprived of any jurisdiction whatsoever to grant petitioner any relief. In the ordinary course of events it will be six or seven months before petitioner's appeal to the Circuit Court of Appeals will be heard on the merits. Meanwhile, through collection of the tax the subject-matter of the appeal may be destroyed, and the case become moot before a hearing may be had in the Circuit Court of Appeals. In addition, the order of the court below, though apparently an interlocutory order, has the effect of finally disposing of the appeal on the merits. The questions involved are of great national importance, and deserve the prompt consideration of this Honorable Court. This petition raises important questions of constitutional law not raised by any other petition now before this Court, and particularly it raises the question whether the provisions of Sections 115 to 131, Title 26, U. S. C., as

amended, are constitutional, if it be held that Congress may constitutionally deprive a taxpayer of all adequate remedy at law to recover taxes illegally collected while at the same time forbidding the granting of an injunction to restrain their collection. Hundreds of similar suits throughout the country involve this question, as well as the others herein raised, and the situation thus presented is so unusual and unprecedented as to justify this Honorable Court in requiring the record below to be certified to it forthwith for decision.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari may issue out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Fifth Circuit commanding said court to certify and send to this Court, on a day certain, to be therein designated, a full and complete Transcript of the Record and all of the proceedings in the Circuit Court of Appeals in said cause entitled Noble-Trotter Rice Milling Co., Inc., Appellant; v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Appellee, No. 7951 on its docket, to the end that said cause may be reviewed and determined by this Court as provided by Section 240 of the Judicial Code, as amended, and that your petitioner may have such other and further relief or remedy in the premises as this Court may deem appropriate and in conformity with said provisions of the Judicial Code, and that said judgment of the

District Court be reversed by this Honorable Court and such relief granted as is appropriate to the cause.

NOBLE-TROTTER RICE MILLING CO., INC.,

By C. A. McCOY,
Attorney for Petitioner.

Of Counsel,
McCOY, KING & JONES,
Lake Charles, La.

No.....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

NOBLE-TROTTER RICE MILLING CO., INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

The Opinions of the Courts Below.

The District Court wrote no opinion and the Circuit Court of Appeals has not yet rendered any decision on the merits of the appeal. The *per curiam* opinion of the Court denying the injunction pending appeal is found on page 98 of the record.

II.

Jurisdiction.

(1) Jurisdiction of this cause is conferred upon this Honorable Court by *Judicial Code, Section* 240, *as amended; United States Code, Title* 28, *Section* 347.

(2) The date of the judgment of the Trial Court to be reviewed is October 28, 1935 (R. 79), the date of the order of the Circuit Court of Appeals denying the injunction pending appeal sought to be reviewed is November 5, 1935. (R. 98.)

(3) The power of this Honorable Court to review the case prior to a disposition of it by the Circuit Court of Appeals and to review the action of the Circuit Court of Appeals in refusing to grant an interlocutory order to preserve the *status quo* is sustained by the following, among other, cases:

The Three Friends (1897), 166 U. S. 1, 49.
Denver v. New York Trust Company (1913), 229 U. S. 123, 133.
Harriman v. Northern Securities Company (1905), 197 U. S. 244, 286.
American Construction Company v. Jacksonville Railway (1893), 148 U. S. 372, 384.
Forsyth v. Hammon (1897), 166 U. S. 506, 513.
In re Chetwood (1897), 165 U. S. 443, 462.
McClellan v. Carland (1910), 217 U. S. 268, 277.
Hanover Star Milling Company v. Metcalf (1916), 240 U. S. 403, 408.
Gay v. Ruff (1934), 292 U. S. 25, 30.

III.

Statement of the Case.

A full statement of the case has been given under heading 2 in the petition and in the interest of brevity the statement is not repeated at this point.

IV.

Specification of Errors.

(1) The District Court erred in holding that it was without jurisdiction to hear petitioner's cause because of the provisions of R. S. Sec. 3224, and Sec. 21(a) of the Agricultural Adjustment Act, as amended.

(2) The District Court erred in refusing to grant petitioner a preliminary injunction pending a hearing on the merits.

(3) The District Court and Circuit Court of Appeals erred in holding that said Sec. 21(a) did not deprive petitioner of its property without due process of law contrary to the Fifth Amendment to the Constitution of the United States, in view of the allegations in the bill, admitted by the motion to dismiss, that petitioner was without remedy at law to recover the taxes paid if they were held to be illegal.

(4) The District Court and the Circuit Court of Appeals erred in holding that if said Sec. 21(a) forbade the granting of an injunction restraining the collection of the tax, and if petitioner had no remedy at law to recover the same, if it be held they were illegally collected, respondent could neverthe-

less employ the summary proceedings for immediate collection of the tax provided in Sections 115 to 131, Title 26, U. S. C., as amended, without depriving petitioner of its property without due process of law contrary to the Fifth Amendment to the Constitution of the United States.

(5) The District Court and the Circuit Court erred in holding that either or both R. S. §3224, and Sec. 21(a) of said Act prevented the granting of an injunction under the special and extraordinary circumstances presented by this case.

(6) The Circuit Court of Appeals erred in holding that petitioner had "a remedy at law to recover back any taxes illegally exacted."

(7) The Circuit Court of Appeals erred in refusing to grant petitioner an injunction to preserve the *status quo* pending its appeal from the order dismissing the bill.

(8) The Circuit Court of Appeals erred in refusing to grant petitioner an injunction pending the appeal for the purpose of preserving the appellate jurisdiction of that Court.

(9) The Circuit Court of Appeals erred in holding either or both R. S. §3224, and Sec. 21(a) of said Act "deprived the Court of jurisdiction to grant injunctive relief."

(10) The District Court and Circuit Court of Appeals erred in not holding the Agricultural Adjustment Act, as amended, to be violative of Art. 1, Sec. 1, Amendments Five and Ten of the Constitution of the United States.

Petitioner expects to rely on all of the foregoing specifications of error.

V.

ARGUMENT

Summary of the Argument.

Point A

Neither R. S. §3224, nor Sec. 21(a) of the Agricultural Adjustment Act, properly interpreted, bars injunctive relief in this case.

Point B

Sec. 21(d) of the Agricultural Adjustment Act deprives petitioner of any adequate remedy at law.

Point C

If R. S. §3224, and Sec. 21(a) of the Agricultural Adjustment Act forbid the granting of an injunction in this case, then they are unconstitutional.

Point D

The summary proceedings provided in Sections 115 to 131, Title 26, U. S. C., as amended, are unconstitutional when applied to a taxpayer who has been deprived of both legal and equitable remedies to test the constitutionality of the tax thus sought to be collected.

Point E

The Agricultural Adjustment Act, as amended, is unconstitutional.

Point F

This is a case where certiorari should be granted prior to the final decree by the Circuit Court of Appeals.

Point A

Inapplicability of R. S. §3224 and Section 21(a) of the Agricultural Adjustment Act.

In wording and in effect R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act, as amended, are for all practical purposes identical. For the convenience of the Court the two acts are here set out side by side:

R. S. §3224.	**A. A. A. Sec. 21(a).**
No suit	No suit, action or proceeding (including probate, administration, receivership, and bankruptcy proceedings)
shall be maintained in any court	shall be brought or maintained in any court
for the purpose of restraining the assessment or collection of any tax.	if such suit, action or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or

> collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment * * *.

This Court has consistently held that despite the apparently unconditional terms of R. S. §3224, injunctions against the collection of a tax may issue in proper cases. The latest expression of the Court on the point is found in *Miller v. Standard Nut Margarine Company* (1932), 284 U. S. 498, 509, where the Court said:

> "The section does not refer specifically to the rule applicable to cases involving exceptional circumstances. The general words employed are not sufficient, and it would require specific language undoubtedly disclosing that purpose, to warrant the inference that Congress intended to abrogate that salutary and well established rule. * * * It has never held the rule to be absolute, but has repeatedly indicated that extraordinary and exceptional circumstances render its provisions inapplicable. * * *
>
> " * * * * It requires no elaboration of the facts found to show that the enforcement of the Act against respondent would be arbitrary and oppressive, would destroy its business, ruin it financially and inflict loss for which it would have no remedy at law. It is clear that, by reason of the special and extraordinary facts and circumstances, Sec. 3224 does not apply."

See also Hill v. Wallace (1922), 259 U. S. 44, 62; Dodge v. Osborn, (1916), 240 U. S. 118, 121.

Section 21(a) was included in the amendment to the Act of August 24, 1935, after numerous suits to restrain the collection of the tax had been filed throughout the country in which the contention was made that the supposed tax was in fact no tax at all but a penalty. *e.g., Penn v. Glenn,* 10 Fed. Supp. 483, 484 (April 13, 1935); F. G. Vogt & Sons, Inc. v. Rothensies, 11 Fed. Supp. 225, 230 (July 17, 1935); Armour & Company v. Harrison (not yet reported, District Court, Northern District of Illinois), in which the Court said in connection with R. S. §3224:

> "Merely to call this exaction a tax does not make it a tax. It is not levied for governmental purposes; therefore, it is not a tax. Therefore, the statute has no application to it."

The obvious purpose of Congress in including this section in the amendment was to make certain its intention that the principle of R. S. §3224 should apply to suits brought to restrain collection of these particular taxes. Having expressed its intention in words practically identical with those used in R. S. §3224, the amendment must be interpreted in the light of the well settled rule that, when a statute is reenacted in the same words as a previous statute which has received a judicial interpretation, the re-enacted statute includes the previous judicial interpretation. Louisville Cement Co. v. Interstate Commerce Commission (1918), 246 U. S. 638, 644.

Further it must be interpreted in the light of the

rule that a statute, susceptible of two constructions, should be construed in such a way as not to raise doubts as to its constitutionality. *Panama R. R. Co. v. Johnson* (1924), 264 U. S. 375; *Michaelson v. United States* (1924), 266 U. S. 42. As will be pointed out hereafter, to interpret this statute in the manner in which it has been interpreted below would raise grave doubts as to its constitutionality.

Interpreting these statutes as not forbidding injunctive relief in *all* cases we may pass to a discussion of whether extraordinary and exceptional circumstances exist in this case such as would render them inapplicable.

Point B

Section 21(d) of the Agricutural Adjustment Act Deprives Petitioner of Its Remedy at Law.

Section 21(d)* forbids the return of any taxes illegally collected under the Act unless the taxpayer proves, to the satisfaction of the Commissioner, that neither the taxpayer nor any person directly or indirectly under his control has, directly or indirectly, included the amount of the tax or any part thereof in the price of the commodity with respect to which it was imposed, or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner or included any part of such amount in the charge or fee

*Printed in the appendix.

for processing, and that the price paid by the taxpayer for the commodity was not reduced by any part of the tax paid. This, obviously, was an attempt to enact into law the economic theory that the burden of any tax imposed upon a manufacturer or processor is ultimately passed on to others. In speaking of a sales tax, Mr. Justice Stone and Mr. Justice Brandeis, dissenting in *Indian Motorcycle Company v. U. S.* (1931), 283 U. S. 570, 581, said:

> "In the Panhandle Oil Case, it was held that this shifting of the burden of a State tax from the seller to the buyer was sufficient to render the tax invalid where the buyer was an agency of the United States, and it was assumed that the burden of the sales tax involved was so inevitably passed on to the buyer as to require this result. With this assumption economists would not, I believe, generally agree. Many hold that whether the burden of any tax paid by the seller is actually passed on to the buyer depends upon considerations so various and complex as to preclude the assumption *a priori* that any particular tax at any particular time is passed on. In some conditions of the market, the burden remains with the seller, or even may be shifted back from the seller to the producer by the reduction of the producer's price, rather than forward to the consumer by an increase of the seller's price."

Likewise Mr. Justice Holmes speaking for the full Court in *Lash's Products Company v. U. S.* (1929), 278 U. S. 175, 176, said:

> "The phrase 'passed the tax on' is inaccurate, as obviously the tax is laid and remains on the

> manufacturer and on him alone. Heckman & Co. v. I. S. Dawes & Son Co., 12 F. (2d) 154. The purchaser does not pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all."

A sales tax is of course easily identifiable, or capable of identification, because levied on the sale of a given identifiable object and based upon the price at which the object is sold. If the question of whether such a tax has been "passed on" is so debatable, how much more so must be the case of a tax, such as a processing tax, which is carried as a part of the processor's expenses of operation? Even more complicated is the situation when, as here, the price paid to the producer and by the consumer fluctuates from day to day on competitive markets influenced by complex and manifold economic factors. However, whatever the merits of the theory *qua* theory, there can be no question that in order to make *factual proof* as to whether a processing tax has been "passed on" it must be shown that the price to the vendee has been increased *because* of the tax, or that the price paid to the producer has been reduced *because* of the tax. When a commodity, such as rice, is bought and sold on competitive markets such proof can be made only by proving what the market *would have been* had there been no tax. This Court held in *International Harvester Company v. Kentucky* (1914), 234 U. S. 216, 223, that the determination of what the market price of a given article would have been under different cir-

cumstances "is a problem that no human ingenuity could solve," and that:

> "The reason is not the general uncertainties of a jury trial but that the elements necessary to determine the imaginary ideal are uncertain both in nature and degree of effect to the acutest commercial mind. The very community, the intensity of whose wish relatively to its other competing desires determines the price that it would give, has to be supposed differently organized and subject to other influences than those under which it acts. * * *
>
> " * * * To compel them to guess on peril of indictment what the community would have given for them if the continually changing conditions were other than they are, to an uncertain extent; to divine prophetically what the reaction of only partially determinate facts would be upon the imaginations and desires of purchasers, is to exact gifts that mankind does not possess."

The situation involved in this case is many times more complex than that in the case just referred to. The manner in which the rice milling business is conducted is too complicated to set out in the confines of this brief but is fully set out in the petition and affidavits in support thereof. (R. 16-21, 60-75.) Because of the manner in which the rice milling business is, and must be, conducted it is impossible for a miller to tell accurately whether he has made a profit or loss with respect to the purchase, milling, and sale of a given lot of rough rice. (R. 62.) He can make a book figure with regard to any such lot.

of rice by the use of averages, estimates, and arbitraries but that is all. He can only tell, at the end of the season, whether he has made a gain or loss on the season's operations. (R. 62.) The processing tax is levied upon each lot of rice based upon its weight at the time it reaches the mill and in order to recover the tax paid on such rice, under the provisions of Sec. 21(d), the miller must prove that he did not "pass on" the tax with respect to that particular lot of rice. Since he cannot even determine whether he made a profit or a loss on the particular transaction, it is manifestly impossible for him to know, much less prove, whether he has passed the tax on. However, even if he were able to prove exactly the amount of profit he made on each transaction, he would still have proved nothing but that. For all that he, or anyone else, could know he might have been able to sell the particular lot of rice for exactly the same price even if there had been no tax and he might have been able to purchase it for exactly the same price had there been no tax. On the face of it such matters are incapable of proof or even a sound guess. The miller cannot control the market on which he buys nor that on which he sells but he is compelled to buy and sell on those markets if he is to stay in the rice milling business. This lack of control of the markets by the miller is illustrated by the fact that the present cost of rough rice, plus operatings costs, including tax, is more than the miller can reasonably expect to get out of the products processed from it on the present market

for clean rice and rice products. (R. 62.) Manifestly under such circumstances no one can know, much less prove, whether the ultimate burden of the tax has fallen on the producer, the miller, or the purchaser. An analogous situation arises where a trademark has been infringed and the question arises as to how much of the sales price received by the infringer is attributable to the use of the trademark and how much to the intrinsic value of the object sold. In *Hamilton Shoe Company v. Wolf Bros.* (1916), 240 U. S. 251, 260, this Court held that in such a case it would, in the very nature of things, be impossible to ascertain to what extent the infringer could have effected sales and at what prices except for the use of the trademark. The same principle is applicable here—it is inherently impossible, in the circumstances of this case, for petitioner, or any other rice miller, to ascertain or prove to what extent he could have "effected sales and at what prices" except for the existence of the processing tax.

More than a thousand suits to enjoin the collection of these taxes have been filed throughout the United States. Insofar as petitioner knows the government has never yet been able to suggest *how* the proof required by the statute can be made. The government has satisfied itself with the simple assertion that proof *can* be made and with citing the opinion of this Court in *United States v. Jefferson Electric Manufacturing Company* (1934), 291 U. S. 386, 402, where the Court said:

"If the taxpayer has borne the burden of the tax, he can readily show it." * * *

The tax involved in that case was a tax upon the *sale* of a definite determinable object and amounted to 5% of the price for which the object was sold. The tax was not upon the manufacture, or the manufacture *and* sale. *Indian Motor Cycle Company v. United States* (1931), 283 U. S. 570, 574. In determining whether the payer of the tax collected it from the vendee or paid it himself there were no such complications as here exist. Indeed it was not suggested by anyone that the required proof could not be made; only that the taxpayer should not have to make it because the tax involved in the suit had been paid prior to the passage of the Act and at a time when it would not have been necessary for the payer to make such proof to procure refund. (P. 401.) The present case came before the Circuit Court of Appeals on a *final judgment dismissing the bill* on motion of the respondent which admitted the allegation that the proof required by the Act was impossible of being made. Nevertheless, and in the face of this, the Circuit Court of Appeals held that petitioner had "a" remedy at law (nothing being said as to the *adequacy* of it). Petitioner asserts that on the face of the Act, considering the *kind* of tax involved, an impossible burden of proof is placed upon petitioner. Petitioner further asserts that even if this were not true the Courts below should have enjoined the collection of the tax until such time as the courts could make a finding upon the

fact question of whether, under the peculiar conditions of the rice milling industry, the proof could be made. Respondent has not denied the allegations of petitioner's bill in this respect and under the circumstances the Court should not have dismissed the bill but was under the plain duty of preserving the *status quo* until such time as the facts upon which petitioner's constitutional rights depended could be fully determined. *cf Ohio Oil Company v. Conway* (1929), 279 U. S. 813.

Besides the lack of any adequate remedy at law this case presents several other grounds for equitable relief which have been held sufficient by this Court for the enjoining of the collection of a tax:

1. Multiplicity of suits (R. 23). *Wilson v. Illinois Southern Railroad* (1924), 263 U. S. 574; *Raymond v. Chicago Union Traction Company* (1907), 207 U. S. 20.

2. Congress has made no appropriation to repay any of these taxes if illegally collected, even if an adequate remedy at law were available, and in view of the tremendous amount involved it is improbable that any such appropriation will be made. (R. 24.) *Stewart Dry Goods Company v. Lewis* (1932), 287 U. S. 9.

3. The statute purporting to give the legal remedy has never been interpreted by the Courts and for this reason, if no other, petitioner's remedy at law cannot be said to be adequate. *Atlantic Coast Line v. Daughton* (1923), 262 U. S. 413. *cf Union Pacific Railroad v. Weld County* (1917), 247 U. S. 282.

4. The existence of the heavy civil and criminal penalties provided by Section 19(b) of the

Act*. (R. 15.) *Ex Parte Young* (1908), 209 U. S. 123, 146; *Wallace v. Hines* (1920), 253 U. S. 66.

Point C

Unconstitutionality of R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act Under the Circumstances of This Case.

The argument is made that the District Courts and Circuit Courts of Appeals, not being constitutional courts, may be completely abolished by Congress and therefore Congress may place any desired restriction on their jurisdiction. The answer to this is that Congress has not abolished the District Courts nor the Circuit Courts of Appeals and not having abolished them the Congress may not constitutionally deprive one class of citizens of the right to equitable relief therein while at the same time and under similar circumstances other taxpayers are permitted to obtain such relief. Persons other than those subject to the processing tax from whom illegal taxes are sought to be collected may enjoin their collection under special and extraordinary circumstances. *Hill v. Wallace, supra; Miller v. Standard Nut Margarine Company, supra.* The right to protect one's property by invoking the aid of courts is as much a property right as the property itself, and to deny one class of citizens this right while granting it to others under similar circumstances

*The applicable penalty provisions are copied in Appendix C hereto.

is to deprive the class so denied of its property without due process of law. In *Truax v. Corrigan* (1921), 257 U. S. 312, which involved an Arizona statute which forbade the issuance of injunctions to protect property rights in cases of labor disputes the contention was made in support of the validity of the statute that the State could have completely abolished the lower courts and therefore the State could put such limitations as it desired upon their jurisdiction. This court nevertheless held the statute violative of the Fourteenth Amendment. Since the validity of exertions by the Federal Government of any of its delegated powers under the Fifth Amendment are to be measured by the same standards by which exertions of State power are measured under the Fourteenth Amendment, *Hamilton v. Kentucky Distilleries Co.* (1919), 251 U. S. 146, 156, it would seem clear that R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act are unconstitutional if they be construed as depriving courts of jurisdiction to issue injunctions to protect property rights in tax cases where the taxpayer is without remedy, or at least adequate remedy, at law.

In *Brinkerhoff-Faris Trust & Savings Company v. Hill* (1930), 281 U. S. 673, the Supreme Court of Missouri held that the trial court properly dismissed a bill seeking to enjoin the illegal assessment and collection of taxes on the ground that the taxpayer should first have pursued remedies before the State Board of Equalization. That court had

previously held that the State Board of Equalization was without jurisdiction to hear such complaints. The effect of the second decision was to deprive the petitioner of all right to test the validity of the tax. This court held that this amounted to a deprivation of petitioner's property without due process of law, Mr. Justice Brandeis saying:

> "Whether acting through its judiciary or through its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it."

This language is exactly applicable to the instant case and seems conclusive that if R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act be construed as forbidding injunctive relief in this case they are unconstitutional. See also *Graham & Foster v. Goodcell* (1931), 282 U. S. 409, 430, 431.

However absolute the power of Congress to destroy the jurisdiction of the inferior Federal Courts may seem, it is no more absolute than the apparent power of the State to arbitrarily exclude a foreign corporation from doing business within its borders. Nevertheless, this court has held, *Fidelity & Deposit Company v. Tafoya* (1926), 270 U. S. 426, that this "most absolute seeming" right was qualified and in some circumstances could become wrong, and that despite this apparently unqualified right the State could not impose an unconstitutional condition upon the foreign corporation coming into the

State. The exercise of Congress's right to limit the equity jurisdiction of the lower Federal Courts in the granting of injunctions in tax cases such as the present would be, as in the case just cited, for the purpose of securing a result forbidden by the Fifth Amendment, i. e., the deprivation of petitioner's property without due process of law, and may not stand.

There is still another reason why these statutes, if construed to absolutely and in all cases forbid injunctions, are unconstitutional. The Constitution, Article III, Section 1, vests the judicial power of the United States in one Supreme Court and such inferior courts as the Congress may from time to time ordain and establish. By Section 2 of Article III this judicial power extends to all cases in law and *equity* arising under the Constitution and laws of of the United States. Congress having established the District Courts and the Circuit Courts of Appeals, they, by virtue of the Constitution, at once become vested with judicial power in all cases arising under the Constitution and laws of the United States. These inferior courts derive their *judicial power* from the Constitution and not from any act of Congress. Congress may well have the power to regulate the procedure in these courts and to define their jurisdiction but Congress may not, it is submitted, deprive the courts of their *inherent judicial powers* which naturally follow from the Constitutional grant of those powers. This was expressly held in *Michaelson v. United States*

(1924), 266 U. S. 42, 64, 65, 66, where the court said:

> *"If the statute now under review encroaches upon the equity jurisdiction intended by the Constitution, a grave constitutional question in respect of its validity would be presented;* and it, therefore, becomes our duty, as this Court has frequently said, to construe it 'if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score.' Panama R. R. Co. v. Johnson, 264 U. S. 375.
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> * * *
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> "But it is contended that the statute materially interferes with the inherent power of the courts and is therefore invalid. That the power to punish for contempts is inherent in all courts, has been many times decided and may be regarded as settled law. It is essential to the administration of justice. *The courts of the United States, when called into existence and vested with jurisdiction over any subject, at once become possessed of the power.* So far as the inferior Federal Courts are concerned, however, it is not beyond the authority of Congress (*Ex parte* Robinson, 19 Wall. 505, 510-511; Bessette v. W. B. Conkey Co., 194 U. S. 324, 326); *but the attributes which inhere in that power and are inseparable from it can neither be abrogated nor rendered practically inoperative.* That it may be regulated within limits not precisely defined may not be doubted. The statute now under review is of the latter character."

The power of courts of equity to issue injunctions to protect property rights, which could not otherwise be protected, is quite as inherent as the power

to punish for contempt. Conceding the authority of Congress to regulate or limit the use of the power, to an undefined extent, the case here presents no such situation, for to interpret the acts as depriving the courts of the power to issue injunctions in *every case* involving the collection of the tax, would be to completely destroy one of the inherent powers of the court which it possesses by virtue of Section 2 of Article III of the Constitution. For these reasons petitioner submits that R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act, so construed, are unconstitutional.

Point D

Unconstitutionality of Summary Proceedings for Collection of the Tax.

Under Sections 115 to 131, Title 26, U. S. C., as amended,* which are incorporated into the present Act, the Commissioner is authorized to collect the taxes, upon non-payment, by the fixing of liens on all of petitioner's property or by the levying of distraints against petitioner's property, including bank accounts, etc. The procedure is summary and under the distraint proceedings it would be entirely possible for the Commissioner to collect the full tax alleged to be owed by petitioner before petitioner could even know any proceedings had been started to collect the tax. All that would be necessary would be for the Commissioner or a deputy to walk

*Printed in Appendix B.

to petitioner's bank with the proper papers and distrain petitioner's money there deposited. The constitutionality of this summary procedure was upheld in *Phillips v. Commissioner* (1931), 283 U. S. 589, 596, upon the express ground that under existing statutes the taxpayer was given ample opportunity to ultimately test the liability for the tax in a court of law, the court saying:

> "Where only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, *if the opportunity given for the ultimate judicial determination of the liability is adequate.* Springer v. United States, 102 U. S. 586, 593; Scottish Union & National Ins. Co. v. Bowland, 196 U. S. 611, 631."

Under the facts of this case plaintiff is deprived of all legal remedy to recover the tax collected, if it be held illegal, because of the impossible burden of proof petitioner would have to meet in such a suit and, if R. S. §3224 and Sec. 21(a) be so construed, petitioner is deprived of the right to test the validity of the tax by a suit for an injunction. To permit the government to summarily seize petitioner's property under these circumstances would be to deprive petitioner of his property without due process of law and to argue this further would be to argue the obvious. See, in addition to the case cited, *Lipke v. Lederer* (1922), 259 U. S. 557, 562; *Carpenter v. Shaw* (1930), 280 U. S. 363, 369; *Ward v. Love County* (1920), 253 U. S. 17.

Point E

The Agricultural Adjustment Act, as Amended, Is Unconstitutional.

Petitioner asserts that the Agricultural Adjustment Act, as amended, is unconstitutional for the following reasons:

1. The Act, though in form a revenue measure, is in fact an attempt to regulate the price at which petitioner buys and sells rice in intrastate commerce.

2. The Act is an attempt to control the production of agricultural commodities within the several States.

3. The taxes are not levied for the general welfare or for a public purpose.

4. The Act, as amended, contains an unconstitutional delegation of legislative power to the Secretary of Agriculture.

Section 2(1) of the Act declares the policy of the Act to be "to establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. * * *" The rice miller is still compelled to pay the market price for all rice bought from farmers, and in addition thereto he is compelled to pay $1.62 per barrel

on the rice so purchased, which $1.62 in turn is given to the farmer under the guise of benefit payments. The object is to raise the price to the farmer and that object is obtained in part, at least, by compelling petitioner to pay at least $1.62 per barrel more for his rice than he would otherwise have to pay. Since the purchase is wholly within intrastate commerce, it is unquestionably beyond the power of the Federal Government to control. *Hill v. Wallace* (1922), 259 U. S. 44; *Schechter Poultry Corporation v. United States* (1935), 295 U. S. 495; *Butler v. United States of America* (C. C. A., First, 1935), 78 Fed. (2nd) 1. Congress being without power by direct regulation to fix or control these prices, it cannot achieve the same result by casting a law having that purpose into the form of a revenue measure. *Child Labor Tax Case* (1922), 259 U. S. 20; *Hill v. Wallace, supra; Hammer v. Dagenhart* (1918), 247 U. S. 251.

Secondly, the Act attempts to control and reduce the production of agricultural commodities by farmers within the several States. In Section 8(1) the Secretary of Agriculture is authorized

> "to provide for reduction in the acreage or reduction in the production for market, or both, of any basic agricultural commodity, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith or upon that part of the production of any basic agricultural commodity required for domestic consumption, such amounts as the Secretary deems fair and reasonable." * * *

Of all industries, agriculture is the most essentially intrastate, and this has long been recognized by this Court. *Kidd v. Pearson* (1888), 128 U. S. 1, 21; *Heisler v. Thomas Colliery Company* (1922), 260 U. S. 245, 259; *Industrial Association v. United States* (1925), 268 U. S. 64, 82. Since the Act has for its purpose the regulation of this purely intrastate matter, *Schecter Poultry Corporation v. U. S., supra; Hill v. Wallace, supra,* the tax levied to effectuate this purpose must fall. *Child Labor Tax Case, supra; Railroad Retirement Board v. Alton Railroad Company* (1935), 295 U. S. 330; *Gibbons v. Ogden* (1824), 9 Wheat. 1, 199.

The fact that the arrangements between the Secretary of Agriculture and the individual farmers by which the latter reduce their acreage and the former makes benefit payments to them therefor out of the taxes collected from processors does not make the Act in purpose and effect any the less a regulation of agriculture within the State. *cf. Schecter Poultry Corporation v. U. S., supra,* p. 529. The arrangements are made by virtue of, and under authority of, the law, and it is idle to say that the act of the farmer in reducing his acreage pursuant to the contract with the Secretary of Agriculture is voluntary when the farmer knows that if he does not execute such agreement he is subjected to the penalty of having to sell his commodity at the same price at which other farmers sell it minus the substantial amount received by the other farmers by way of benefit payments. (R. 41.) Further-

more, without the tax provisions in the Act (which are certainly not voluntary) the enormous benefit funds with which to coerce the farmers into making the "voluntary" agreements would not be available and the result sought to be achieved by Congress, to wit, the regulation of agriculture within the several States, could not be accomplished.

Third, it seems plain that these taxes are not levied for the general welfare or a public purpose, as required by Article I, Section 8, Clause 1, of the Constitution. It is plain from the face of the Act that it is an attempt to redistribute purchasing power and the taxes provided by the Act are to be used solely for that purpose. Under Section 12(b) of the Act it is provided that "* * * for the purpose of effectuating the declared policy of this title, a sum equal to the proceeds derived from *all taxes* imposed under this title is hereby appropriated to be available to the Secretary of Agriculture * * *." That a tax cannot be levied on A for the purpose of paying a bounty to B was long ago held by this court in *Loan Association v. Topeka* (1874), 87 Wall. 655, 663, where Mr. Justice Miller said:

> "The power to tax is, therefore, the strongest, the most pervading of all the powers of the government, reaching directly or indirectly to all classes of the people. It was said by Chief Justice Marshall, in the case of McCullough v. The State of Maryland, that the power to tax is the power to destroy. A striking instance of the truth of the proposition is seen in the fact that the existing tax of ten per cent imposed by the United States on the circula-

> tion of all other banks than the National banks, drove out of existence every State bank of circulation within a year or two after its passage. This power can as readily be employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited wealth and prosperity to the other, if there is no implied limitation of the uses for which the power may be exercised."

It has been urged that the tax is constitutional because a favorable readjustment of the farmers' economic condition will ultimately redound to the general public good. The same sort of an argument was made to the court in *Loan Association v. Topeka, supra,* but the court rejected it, saying at page 665:

> "If it be said that a benefit results to the local public of a town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the innkeeper, the banker, the builder, the steamboat owner are equally promoters of the public good, and equally deserving the aid of the citizens by forced contributions."

While many assert that our economic difficulties are attributable to the condition of the farmer, there are still others who attribute it to the condition of the manufacturers or the condition of our export trade. If a tax can be levied to pay a bounty to farmers no reason is perceived why a tax may not be constitutionally levied to pay bounties to manu-

facturers or to those engaged in export trade or those engaged in any of our basic industries.

Finally, the processing tax provisions (Sec. 9),* even as altered by the amendment of August 24, 1935, violate Article I, Section 1, of the Constitution in making an unlawful delegation of legislative power to the Secretary of Agriculture. While the amendment provides for an initial processing tax on rice of 1c per pound (or $1.62 per barrel), nevertheless, under Sec. 9 the Secretary is given full power at any time to reduce, increase, modify or eliminate the tax, not by any practical standard, but largely by his opinion or prophecy of future prices and conditions. Where all such questions as to the duration of the tax and its increase or decrease or elimination are thus left to be resolved by the Secretary of Agriculture alone, it is clear that the Act still runs counter to Article I, Section 1, and is therefore unconstitutional. *Schechter Poultry Corporation, supra; Panama Refining Co. v. Ryan* (1934), 293 U. S. 388.

Point F

Certiorari Should Be Granted at the Present Time.

The opinion and order of the Circuit Court of Appeals, while interlocutory in form, in truth and in fact finally disposed of the case upon the merits. When it held that petitioner had a remedy at law and that the Courts below were without jurisdiction to grant the injunction prayed for (R. 98) the result

*Set out in Appendix D.

was a denial of all the relief sought by petitioner. Since the case will not come up for a hearing on its merits in the ordinary course of events until after the lapse of six or seven months the subject of the suit will be destroyed, the case become moot, and petitioner deprived of all right to have its case heard on the merits by any court unless this Court grants certiorari. If the order of the Circuit Court of Appeals is allowed to stand all the trial courts in the Circuit will feel bound thereby and will of necessity dismiss all bills filed in the Circuit for the purpose of testing the constitutionality of the taxes levied by the Agricultural Adjustment Act, as amended, with the result that not only your petitioner, but all other citizens living within the States of Texas, Louisiana, Mississippi, Alabama, Georgia and Florida be effectively deprived of any opportunity of testing the validity of this statute. There can be no question but that the constitutional questions raised in this case are grave and of national importance and this case involves an unprecedented situation. That the action of the Circuit Court of Appeals in denying the motion for an injunction to preserve the *status quo* pending appeal was wrong is plainly indicated by the fact that its action is contrary to the action of the Circuit Courts of Appeals for the Second, Sixth, Eighth, Ninth and Tenth Circuits, in granting injunctions in similar cases. It stands alone, unsupported by the decision of any other circuit. Its error can be corrected only by this Court now granting certiorari since there is

now before this Honorable Court a cause involving the constitutionality of the Agricultural Adjustment Act, which said cause is set for oral argument on December 9, 1935, and which will in the ordinary course of events be decided long prior to the time when this case would come up for hearing in the Circuit Court of Appeals. Without a writ of certiorari from this Honorable Court petitioner will have been compelled meanwhile to pay the taxes and if the Act be held unconstitutional its case would become moot and the taxes paid by it probably forever lost.

While the power to bring up a case pending in the Circuit Court of Appeals prior to final action in that Court is one to be sparingly exercised, the power nevertheless exists. *American Construction Company v. Jacksonville Railway* (1893), 148 U. S. 372. This Court said in *In Re Chetwood* (1897), 165 U. S. 443, 462:

> "And although, as observed in that case, this writ has not been issued as freely by this court as by the Court of Queen's Bench in England, and, prior to the Act of March 3, 1891, C. 517, 26 Stat. 826, had been ordinarily used as an auxiliary process merely, yet, whenever the circumstances imperatively demand that form of interposition the writ may be allowed, as at common law, to correct excesses of jurisdiction *and in furtherance of justice.*"

Likewise in *Harriman v. Northern Securities Company* (1905), 197 U. S. 244, 286, where the decree of the Circuit Court of Appeals actually dis-

posed of the entire case, although interlocutory in form, this Court granted certiorari. Other cases in which this Court has granted certiorari prior to a final decree in the Circuit Court of Appeals are *Denver v. New York Trust Company* (1913), 229 U. S. 123, 133; *Spiller v. Atchison, T. & S. F. Railway Company* (1920), 253 U. S. 117, 120; and *Dupont Powder Company v. Mastland* (1917), 244 U. S. 100. And in *The Three Friends* (1897), 166 U. S. 1, 49, this Court reviewed a decision of the District Court prior to action by the Circuit Court of Appeals on the appeal pending therein.

CONCLUSION

It is therefore respectfully submitted that this case is such as to call for the exercise by this Court of its supervisory powers. If the decisions of the District Court and the Circuit Court of Appeals stand, the result will be that petitioner will be deprived of its property without due process of law, and will be so deprived without any opportunity to test in the Courts the constitutional rights asserted in its bill of complaint. Unless this Honorable Court exercises such supervisory powers prior to the entry of a final decree in the Circuit Court of Appeals the subject matter of the suit will be destroyed, the suit become moot, and petitioner forever deprived of its constitutional rights. This Court should, therefore, review forthwith the decision of

the United States Circuit Court of Appeals for the Fifth Circuit and the decision of the District Court of the United States for the Eastern District of Louisiana.

Respectfully submitted,

By C. A. McCoy,
Attorney for Petitioner.

McCoy, King & Jones,
Of Counsel.

APPENDIX A

R. S. ART. 3224

No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

* * *

SECTION 21 OF AGRICULTURAL ADJUSTMENT ACT

SEC. 21 (*a*) No suit, action, or proceedings (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (*d*) of this section, may be reserved in the court's order.

(*b*) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regu-

lations of the Secretary with the approval of the President prior to the date of the adoption of this amendment, are hereby legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which have accrued and remain unpaid on the date of the adoption of this amendment shall be assessed and collected pursuant to Section 19, and to the provisions of law made applicable thereby. Nothing in this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary of Agriculture or of the President done or made prior to the date of the adoption of this amendment.

(*c*) The making of rental and benefit payments under this title, prior to the date of the adoption of this amendment, as determined, prescribed, proclaimed and made effective by the proclamations of the Secretary of Agriculture or of the President or by regulations of the Secretary, and the initiation, if formally approved by the Secretary of Agriculture prior to such date of adjustment programs under Section 8 (1) of this title, and the making of agreements with producers prior to such date, and the adoption of other voluntary methods prior to such date, by the Secretary of Agriculture under this title, and rental and benefit payments made pursuant thereto, are hereby legalized and ratified, and the making of all such agreements and payments, the initiation of such programs, and the adoption of all such methods prior to such date are hereby legalized, ratified, and confirmed as fully to all intents and purposes as if each such agreement, program, method, and payment had been specifically author-

ized and made effective and the rate and amount thereof fixed specifically by prior Act of Congress.

(*d*) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considerd by the court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (*a*) or (*c*) of Section 15, Section 16, or Section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of Section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by rea-

son of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be refunded or credited to any person (not a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (*a*) and (*b*) of Section 16, had the tax terminated by proclamation pursuant to the provisions of Section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish to the satisfaction of the Commissioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held

invalid a claim therefor (conforming to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2) no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, or jurisdiction of such courts based upon the amount in controversy.

(*e*) In connection with the establishment, by any claimant, of the facts required to be established in subsection (*d*) of this section, the Commissioner of Internal Revenue is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda, relative to any matter affecting the findings to be made by the Commissioner pursuant to subsection (*d*) of this section, to require the attendance of the claimant or of any officer or employee of the claimant, or the attendance of any other person having knowledge in the premises, and to take, or cause to be taken, his testimony with reference to any such matter, with power to administer oaths to such person or persons. It shall be lawful for the Commissioner, or any collector designated

by him, to summon witnesses on behalf of the United States or of any claimant to appear before the Commissioner, or before any person designated by him, at a time and place named in the summons, and to produce such books, papers, correspondence, memoranda, or other records as the Commissioner may deem relevant or material, and to give testimony or answer interrogatories, under oath, relating to any matter affecting the findings to be made by the Commissioner pursuant to subsection (*d*) of this section. The provisions of Revised Statutes 3174 and of Revised Statutes 3175 shall be applicable with respect to any summons issued pursuant to the provisions of this subsection. Any witness summoned under this subsection shall be paid, by the party on whose behalf such witness was summoned, the same fees and mileage as are paid witnesses in the courts of the United States. All information obtained by the Commissioner pursuant to this subsection shall be available to the Secretary of Agriculture upon written request therefor. Such information shall be kept confidential by all officers and employees of the Department of Agriculture, and any such officer or employee who violates this requirement shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both, and shall be removed from office.

(*f*) No refund, credit, or abatement shall be made or allowed of the amount of any tax, under Section 15, or Section 17, unless, within one year after the right to such refund, credit, or abatement has accrued, a claim for such refund, credit, or abatement (conforming to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled to such refund, credit, or abatement, except that if the right to any such refund, credit, or abatement accrued prior to the date of the adoption of this amendment, then

such one-year period shall be computed from the date of this amendment. No interest shall be allowed or paid, or included in any judgment, with respect to any such claim for refund or credit.

(*g*) The provisions of Section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax, or any refund or credit authorized by subsection (*a*) or (*c*) of Section 15, Section 16, or Section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of Section 317 of the Tariff Act of 1930.

APPENDIX B

Provisions of Title 26, U. S. C. Dealing With Collection of Taxes By Distraint

Sec. 115. *Lien for Taxes.* (*a*) If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. (Balance of Section deals with recording of lien and giving of releases.) (R. S. Sec. 3186; Mar. 1, 1879, C. 125, Sec. 3, 20 Stat. 331; Mar. 4, 1913, C. 166, 37 Stat. 1016; Feb. 26, 1925, C. 344, 43 Stat. 994; May 29, 1928, 8 a.m., C. 852, Title IV, Sec. 613, 45 Stat.)

116. *Distraint for Taxes.* If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with 5 per centum additional thereto, and interest as aforesaid, by distraint and sale, in the manner hereafter provided, of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid. (Balance of Section deals with exempt property.) (R. S. Sec. 3187; June 2, 1924, 4:01 p.m., C. 234, Sec. 1016, 43 Stat. 343.)

117. *Same; Levy.* In such case of neglect or refusal, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property

and rights to property, except such as are exempt by Section 116 of this title, belonging to such person, or on which the said lien exists, for the payment of the sum due as aforesaid, with interest and penalty for nonpayment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy. (R. S. Sec. 3188.)

118. *Same; Exhibit of Evidences Relating to Property.* All persons, and officers of companies or corporations, are required, on demand of a collector or deputy collector about to distrain or having distrained on any property, or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the tax due as aforesaid. (R. S. Sec. 3189.)

119. *Same; Proceedings On.* When distraint is made, as aforesaid, the officer charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the officer making such distraint, shall be left with the owner or possessor or such goods or effects, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded, and the time and place of sale; and the said officer shall forthwith cause a notification to be published in some newspaper within the county wherein said distraint is made, if a newspaper is published in said county, or to be publicly posted at the post office, if there be one within five miles nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Such notice shall specify the articles distrained, and the time and place for the sale thereof. Such time shall not be less than ten nor more than twenty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notice as herein

provided, and the place proposed for the sale shall not be more than five miles distant from the place of making such distraint. Said sale may be adjourned from time to time by said officer, if he deems it advisable, but not for a time to exceed in all thirty days. (R. S. Sec. 3190.)

120. *Same; Sale of Property Subject to Tax.* When property subject to tax, but upon which the tax has not been paid, is seized upon distraint and sold, the amount of such tax shall, after deducting the expenses of such sale, be first appropriated out of the proceeds thereof to the payment of the tax. And if no assessment of such tax has been made upon such property, the collector shall make a return thereof in the form required by law, and the Commissioner of Internal Revenue shall assess the tax thereon. (R. S. Sec. 3191.)

121. *Same; Sale of Property; Purchase for United States.* When any personal property is advertised for sale under distraint as aforesaid, the officer making the seizure shall proceed to sell such property at a public auction, offering the same at a minimum price, including the expenses of making the levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the officer conducting the sale may declare the same to be purchased by him for the United States. The property so purchased may be sold by the collector within whose district the sale was made under such regulations as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. The collector shall render to the Commissioner a distinct account of all charges incurred in such sales and, in case of resale, shall pay into the Treasury the proceeds as provided in Section 3210 of the Revised Statutes, as amended (R. S. 3192, as amended May 10, 1934, 11:40 a.m., C. 277, Sec. 508, 48 Stat.)

122. *Same; Restoration of Property on Payment Before Sale.* (This merely provides for return of property distrained upon if tax is paid prior to sale.) (R. S. 3193.)

123. *Same; Effect of Certificate of Sale.* In all cases of sale, as aforesaid, the certificate of such sale shall be prima-facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale, and shall transfer to the purchaser all right, title, and interest of such delinquent in and to the property sold; and where such property consists of stocks, said certificate shall be notice, when received, to any corporation, company, or association of said transfer, and shall be authority to such corporation, company, or association to record the same on their books and records in the same manner as if transferred or assigned by the party holding the same, in lieu of any original or prior certificates, which shall be void, whether canceled or not. And said certificates, where the subject of sale is securities or other evidences of debt, shall be good and valid receipts to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt. (R. S. Sec. 3194.)

124. *Same; When Property Not Divisible.* (This deals with special case of indivisible property and allows sale of the whole even though its value exceeds amount of the tax. (R. S. Sec. 3195; June 2, 1924, 4:01 p.m., C. 234, Sec. 1031 (*a*), 43 Stat. 351; re-enacted Jan. 26, 1926, 10:25 a.m., C. 27, Title XI, Sec. 1128(a), 144 Stat. 124.)

125. *Real Estate; Sale to Satisfy Taxes.* When goods, chattels, or effects sufficient to satisfy the taxes imposed upon any person are not found by the collector or deputy collector, he is authorized to collect the same by seizure and sale of real estate. (R. S. Sec. 3196.)

126. *Same; Proceedings.* The officer making the seizure mentioned in Section 125 of this title shall give notice to the person whose estate it is proposed to sell by giving him in hand, or leaving at his last or usual place of abode, if he has any such within the collection district where said estate is situated, a notice, in writing, stating what particular estate is to be sold, describing the same with reasonable certainty, and the time when and place where said officer proposes to sell the same; which time shall not be less than twenty nor more than forty days from the time of giving said notice. The said officer shall also cause a notification to the same effect to be published in some newspaper within the county where such seizure is made, if any such there be, and shall also cause a like notice to be posted at the postoffice nearest to the estate seized, and in two other public places within the county; and the place of said sale shall not be more than five miles distant from the estate seized, except by special order of the Commissioner of Internal Revenue. At the time and place appointed, the officer making such seizure shall proceed to sell the said estate at public auction, offering the same at a minimum price, including the expense of making such levy, and all charges for advertising and an officer's fee of $10. (Balance of section deals with details of conducting sale.) (R. S. Sec. 3197; Feb. 27, 1877, C. 69, Sec. 1, 19 Stat. 248; Mar. 1, 1879, C. 125, Sec. 3, 20 Stat. 331; May 28, 1896, C. 252, 29 Stat. 179; Mar. 3, 1905, C. 1483, Sec. 1, 33 Stat. 1207; July 19, 1919, C. 24, Sec. 1, 41 Stat. 209.)

127. *Same; Certificate of Purchase; Deed.* (This provides for execution of deed by the collector to the purchaser.) (R. S. Sec. 3198.)

128. *Same; Deed Prima-Facie Evidence.* The deed of sale given in pursuance of Section 127 of this title shall be prima-facie evidence of the facts therein stated; and if the proceedings of the officer as set

forth have been substantially in accordance with the provisions of law, shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real estate thus sold at the time the lien of the United States attached thereto. (R. S. Sec. 3199.)

129. *Same; Place of Seizure (and Sale).* Any collector or deputy collector may, for the collection of taxes imposed upon any person, and committed to him for collection, seize and sell any of the property, real or personal (except property exempt from distraint and sale, under Section 3187 of the Revised Statutes, or any right or interest therein, of such person situated in any other collection district within the State in which such officer resides, notwithstanding the provisions of Section 3209 of the Revised Statutes; and his proceedings in relation thereto shall have the same effect as if the same were had in his proper collection district. (R. S. Sec. 3200; amended Jan. 26, 1926, 11:25 a.m., Title XI, Sec. 1129, 44 Stat. 125.)

130. *Same; Redemption Prior to Sale.* (This provides for return of property seized on payment of tax.) (R. S. Sec. 3201.)

131. *Same; Redemption After Sale.* (This provides for redemption after sale by payment to purchaser, within one year after the sale, of the purchase price with interest at 20% per annum.) (R. S. 3202.)

APPENDIX C

Penalty Provisions

Section 19(b) of the Agricultural Adjustment Act:

> "Sec 19. * * * (*b*) All provisions of law, including penalties, applicable with respect to the taxes imposed by Section 600 of the Revenue Act of 1926, and the provisions of Section 626 of the Revenue Act of 1932, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable in respect of taxes imposed by this title: * * * ."

Section 1114 of 1926 Revenue Act, applicable with respect to taxes imposed by Section 600 of that Act:

> "Sec. 1114. (*a*) Any person required under this Act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act, who wilfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisioned for not more than one year, or both, together with the costs of prosecution.
>
> "(*b*) Any person required under this Act to collect, account for and pay over any tax imposed by this Act, who willfully fails to collect or truthfully account for and pay over such tax,

and any person who willfully attempts in any manner to evade or defeat any tax imposed by this Act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

"(*c*) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal-revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

"(*d*) Any person who willfully fails to pay, collect, or truthfully account for and pay over, any tax imposed by Titles IV, V, VI, VII, VIII, and IX, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of Section 3176 of the Revised Statutes, as amended, or for any offense for which a penalty has been recovered under Section 3256 of the Revised Statutes.

"(*e*) Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

"(*f*) The term 'person' as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs."

APPENDIX D

PROCESSING TAX PROVISIONS OF AGRICULTURAL ADJUSTMENT ACT, AS AMENDED, AS APPLIED TO RICE

SEC. 9. (*a*) To obtain revenue for extraordinary expenses incurred by reason of the national economic emergency, there shall be levied processing taxes as hereinafter provided. When the Secretary of Agriculture determines that any one or more payments authorized to be made under Section 8 are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation; except that * * * (2) in the case of rice, the Secretary of Agriculture shall, before April 1, 1935, proclaim that rental or benefit payments are to be made with respect thereto, and the processing tax shall be in effect on and after April 1, 1935. * * * In the case of rice, the period from August 1 to July 31, both inclusive, shall be considered to be the marketing year. The processing tax shall be levied, assessed, and collected upon the first domestic processing of the commodity, whether of domestic production or imported, and shall be paid by the processor. The rate of tax shall conform to the requirements of subsection (*b*). Such rate shall be determined by the Secretary of Agriculture as of the date the tax first takes effect, and the rate so determined shall, at such intervals as the Secretary finds necessary to effectuate the declared policy, be adjusted by him to conform to such requirements. The processing tax shall terminate at the end of the marketing year current at the time the Secretary proclaims that all payments authorized under Section 8 which are in effect are to be discontinued with

respect to such commodity. The marketing year for each commodity shall be ascertained and prescribed by regulations of the Secretary of Agriculture: * * *

(*b*) (1) The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, plus such percentage of such difference, not to exceed 20 per centum, as the Secretary of Agriculture may determine will result in the collection, in any marketing year with respect to which such rate of tax may be in effect pursuant to the provisions of this title, of an amount of tax equal to (A) the amount of credits or refunds which he estimates will be allowed or made during such period pursuant to section 15(c) with respect to the commodity (B) the amount of tax which he estimates would have been collected during such period upon all processing of such commodity which are exempt from tax by reason of the fact that such processings are done by or for a State, or a political subdivision or an institution thereof, had such processings been subject to tax. If, prior to the time the tax takes effect, or at any time thereafter, the Secretary has reason to believe that the tax at such rate, or at the then existing rate, on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, will cause or is causing such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depression of the farm price of the commodity, then the Secretary shall cause an appropriate investigation to be made, and afford due notice and opportunity for hearing to interested parties. If thereupon the Secretary determines and proclaims that any such result will oc-

cur or is occurring, then the processing tax on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be at such lower rate or rates as he determines and proclaims will prevent such accumulation of surplus stocks and depression of the farm price of the commodity, and the tax shall remain during its effective period at such lower rate until the Secretary, after due notice and opportunity for hearing to interested parties, determines and proclaims that an increase in the rate of such tax will not cause such accumulation of surplus stocks or depression of the farm price of the commodity. Thereafter the processing tax shall be at the highest rate which the Secretary determines will not cause such accumulation of surplus stocks or depression of the farm price of the commodity, but it shall not be higher than the rate provided in the first sentence of this paragraph. * * *

SPECIFIC TAX RATE—RICE

(3) For the period from April 1, 1935, to July 31, 1936, both inclusive, the processing tax with respect to rice shall be levied, assessed, collected, and paid at the rate of 1 cent per pound of rough rice. * * *

(6) (A) Any rate of tax which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6) on the processing of any commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be decreased (including a decrease to zero) in accordance with the formulae, standards, and requirements of paragraph (1) of

this subsection, in order to prevent such reduction in the quantity of such commodity or the products thereof domestically consumed as will result in the accumulation of surplus stocks of such commodity or the products thereof or in the depression of the farm price of the commodity, and shall thereafter be increased in accordance with the provisions of paragraph (1) of this subsection but subject to the provisions of subdivision (B) of this paragraph (6).

(B) If the average farm price of any commodity, the rate of tax on the processing of which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or is established pursuant to this paragraph (6), during any period of twelve successive months ending after July 1, 1935, consisting of the first ten months of any marketing year and the last two months of the preceding marketing year—

(*i*) is equal to, or exceeds by 10 per centum or less, the fair exchange value thereof, or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 20 per centum of the fair exchange value thereof.

(*ii*) exceeds by more than 10 per centum, but not more than 20 per centum, the fair exchange value thereof, the rate of such tax shall subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 15 per centum of the fair exchange value thereof.

(*iii*) exceeds by more than 20 per centum the fair exchange value thereof, the rate of such

tax shall (subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 10 per centum of the fair exchange value thereof.

(C) Any rate of tax which has been adjusted pursuant to this paragraph (6) shall remain at such adjusted rate unless further adjusted or terminated pursuant to this paragraph (6), until December 31, 1937, or until July 31, 1936, in the case of rice.

(D) In accordance with the formulae, standards, and requirements prescribed in this title, any rate of tax prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6) shall be increased.

(E) Any tax, the rate of which is prescribed in paragraph (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6), shall terminate pursuant to proclamation as provided in section 9 (a) of this title or pursuant to section 13 of this title. Any such tax with respect to any basic commodity which terminates pursuant to proclamation as provided in section 9 (a) of this title shall again become effective at the rate prescribed in paragraph (2), (3), (4) or (5) of this subsection, subject however, to the provisions of subdivisions (A) and (B) of this paragraph (6), from the beginning of the marketing year for such commodity next following the date of a new proclamation by the Secretary as provided in section 9 (a) of this title, if such marketing year begins prior to December 31, 1937, or prior to July 31, 1936, in the case of rice, and shall remain at such rate until altered or terminated pursuant to the provisions of section 9 or terminated pursuant to section 13 of this title. * * *

(G) If the applicability to any person or circumstances of any tax, the rate of which is fixed in pursuance of this paragraph (6), is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be levied, assessed, collected, and paid (in lieu of all rates of tax fixed in pursuance of this paragraph (6) with respect to all tax liabilities incurred under this title on or after the effective date of each of the rates of tax fixed in pursuance of this paragraph (6)), rates of tax fixed under paragraph (2), (3), (4) or (5), and such rates shall be in effect (unless the particular tax is terminated pursuant to proclamation, as provided in section 9 (a) or pursuant to section (13) until altered by Act of Congress; except that, for any period prior to the effective date of such holding of invalidity, the amount of tax which represents the difference between the tax at the rate fixed in pursuance of this paragraph (6) and the tax at the rate fixed under paragraphs (2), (3), (4) and (5) shall not be levied, assessed, collected, or paid.

RICE—SPECIAL RULE

(7) In the case of rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to a processor, except that, where the producer processes his own rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to the place of processing. * * *

(*c*) For the purposes of part 2 of this title, the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period

specified in section 2; and, in the case of all commodities where the base period is the pre-war period, August 1909 to July 1914, will also reflect interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during said base period; and the current average farm price and the fair exchange value shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture. The rate of tax upon the processing of any commodity, in effect on the date on which this amendment is adopted, shall not be affected by the adoption of this amendment and shall not be required to be adjusted or altered, unless the Secretary of Agriculture finds that it is necessary to adjust or alter any such rate pursuant to section 9 (a) of this title.

(*d*) As used in part 2 of this title— * * *

(7) In the case of rice—

(A) The term "rough rice" means rice in that condition which is usual and customary when delivered by the producer to a processor.

(B) The term "processing" means the cleaning, shelling, milling (including custom milling for toll as well as commercial milling), grinding, rolling, or other processing (except grinding or cracking by or for the producer thereof for feed for his own livestock, cleaning by or directly for a producer for seed purposes, and drying) of rough rice; and in the case of rough rice with respect to which a tax-payment warrant has been previously issued or applied for by application then pending, the term "processing" means any one of the above mentioned processings or any preparation or handling in connection with the sale or other disposition thereof.

(C) The term "co-operating producer" means

any person (including any share-tenant or share-cropper) whom the Secretary of Agriculture finds to be willing to participate in the 1935 production-adjustment program for rice.

(D) The term "processor," as used in subsection (b-1) of section 15 of this title, means any person (including a co-operative association of producers) engaged in the processing of rice on a commercial basis (including custom milling for toll as well as commercial milling).

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Supreme Court of the United States

OCTOBER TERM, 1935

No. 537

RICKERT RICE MILLS, INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

MOTION FOR INJUNCTION TO PRESERVE STATUS QUO

HOMER L. BRUCE,
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Attorneys for Petitioner.
Houston, Texas.

BAKER, BOTTS, ANDREWS & WHARTON,
Of Counsel.
Houston, Texas.

No.....

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TO THE HONORABLE BENJAMIN N. CARDOZO, *Associate Justice of the Supreme Court of the United States:*

Comes now Rickert Rice Mills, Inc., by its counsel, Homer L. Bruce and John P. Bullington, and respectfully states that petitioner on October 25, 1935, brought a bill in equity in the United States District Court for the Eastern District of Louisiana, New Orleans Division, entitled Rickert Rice Mills, Inc., Plaintiff, v. Rufus W. Fontenot, Individually and as

Acting United States Collector of Internal Revenue for the District of Louisiana, Defendant, and numbered 321 in Equity in the New Orleans Division of said court. In its bill of complaint in said cause petitioner prayed for a temporary restraining order to be issued immediately, and for a preliminary injunction after notice to the respondent, and for a permanent injunction on the final hearing of said cause, enjoining the respondent from assessing or collecting or attempting to assess or collect from the petitioner in any manner whatsoever, whether by lien or jeopardy or distraint proceedings, in court or otherwise, any processing taxes levied under and pursuant to the Act of the Congress of the United States known as the Agricultural Adjustment Act, and amendments thereto, or purported to be levied by said Act, upon the petitioner for the processing of rice during the month of September, 1935, and for subsequent months, and any interest or penalty on account of petitioner's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of petitioner. Said application for preliminary injunction was set down for hearing before the judge of said District Court at New Orleans on Monday, October 28, 1935. Notice thereof was duly waived by respondent. Prior to said hearing respondent filed his motion to dismiss said bill, copies of which motion and also of petitioner's bill of complaint are contained in the record in this cause now brought to this Court on petition for certiorari.

After a hearing on petitioner's motion for preliminary injunction and on respondent's motion to dismiss, the Honorable John McDuffie, acting judge of said District Court, on October 28, 1935, refused petitioner's motion for preliminary injunction, granted the motion of respondent to dismiss the said bill of complaint, and dismissed the said bill of complaint, to which petitioner herein duly excepted. Thereafter on the 29th day of October, 1935, the petitioner herein in open court and in the presence of counsel for respondent filed its petition for an appeal, which was duly allowed by the said judge of the United States District Court who tried said cause, and filed at the same time its assignments of error, and also a cost bond was duly filed and approved by the said judge of said District Court. At the time petitioner presented its said petition for appeal, it also petitioned said judge of the District Court to grant it an injunction enjoining the respondent in the manner set out in its request for a preliminary injunction in its bill of complaint, pending the appeal of petitioner to the Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, but the said judge of said District Court refused petitioner's said petition and refused to grant petitioner said injunction pending said appeal.

Petitioner perfected its appeal to the Circuit Court of Appeals for the Fifth Circuit, making said cause returnable at New Orleans, Louisiana, as provided by law, and duly caused to be prepared a transcript of the record in said cause and filed the

same, in accordance with law and within the time allowed by law, in the office of the clerk of said Circuit Court of Appeals at New Orleans, Louisiana, and said cause was duly docketed in that Court as "Rickert Rice Mills, Inc., Appellant, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, No. 7937."

On November 4, 1935, after notice to respondent, petitioner filed in said Circuit Court of Appeals its motion for a preliminary injunction pending the hearing of its appeal enjoining respondent from assessing or collecting from petitioner said taxes. The Circuit Court of Appeals on November 5, 1935, denied petitioner's said motion, stating in its opinion that

> "the taxpayer has a remedy at law to recover back any taxes illegally exacted, and, further that the provisions of the Act as amended deprive the Court of jurisdiction to grant injunctive relief."

Both in the District Court and in the Circuit Court of Appeals petitioner offered to give such security as the court might require in the event the court should ultimately decide the cause against petitioner.

Petitioner has filed in the Supreme Court of the United States its petition for a writ of certiorari in this cause and the record therein.

In said bill of complaint petitioner alleged that the amount of processing taxes on account of the

rice processed by the petitioner during the month of September, 1935, was $57,275.42, and that under said Agricultural Adjustment Act petitioner was required to pay said amount to respondent on or before October 30, 1935, and that respondent was charged with the duty of collecting said tax, and if said tax were not paid on or before October 30, 1935, respondent would assess said tax against the petitioner and serve upon petitioner notice and demand for the payment thereof and would allow petitioner ten days from receipt of such notice within which to pay the same; that in the event said tax should not be paid within said time, respondent would assess against petitioner a penalty equal to 5 per cent of the amount of the tax and interest on the tax at the rate of 1 per cent per month from the due date of the tax until paid; that if the petitioner failed to pay the tax within said ten days, respondent would proceed to collect the tax, penalty and interest by filing a notice of lien on all of petitioner's property and by distraining upon and selling such of petitioner's property as might be necessary to realize the amount of said tax, penalties and interest; and that additional processing taxes for months subsequent to September, 1935, will accrue and be assessed against and collected from the petitioner in the same manner as the tax for the month of September.

Petitioner alleged that the said processing tax was illegal and unconstitutional, and violated various provisions of the Constitution of the United States in many particulars, more fully set forth in peti-

tioner's bill of complaint. The petitioner also alleged that under an amendment to said Agricultural Adjustment Act approved on August 24, 1935, a Section 21(d) was added to said Act, which section provides in substances that petitioner should be allowed no recovery of any of said taxes paid, if the same should be illegal or unconstitutional, unless petitioner established to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner should so find, that neither petitioner nor any person directly or indirectly under petitioner's control or having control over petitioner, has, directly or indirectly, included such amount in the price of the rice with respect to which it was imposed or of any article processed from the rice with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing rice, and that the price paid by the petitioner or such person for said rice was not reduced by any part of such amount. Petitioner in said bill of complaint, alleged, as more fully set out therein, that under said Section 21 (d) it had no adequate remedy at law by which it could recover any part of said taxes if same were unconstitutional and illegal, and that it was impossible, owing to the peculiar conditions existing in the rice milling industry and in the purchase, milling and sale of rice, for petitioner to discharge the burden placed upon it by said Section 21 (d), all as more fully set out in petitioner's bill of complaint.

Petitioner further alleged that in said amendment of August 24, 1935, a new section known as Section 21 (a) was added to said Agricultural Adjustment Act, which in substance provided that no suit to enjoin the collection of said processing taxes should be maintained in any court. Petitioner further alleged that said section was not intended to apply, and did not apply, to the injunction prayed for by petitioner, inasmuch as petitioner had no adequate remedy at law. Petitioner further alleged that if said section should be interpreted as prohibiting the injunction prayed for by petitioner, then the said section, together with the other provision of said Act, was invalid and in violation of the Fifth Amendment to the Constitution, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes would be collected from petitioner and petitioner would have no remedy by which it could recover taxes and would have no remedy to prevent the collection of said unlawful taxes and would be forever deprived of the right to test the constitutionality of said taxes.

Petitioner further alleged that said Section 21 (d) denied the petitioner a complete and adequate remedy at law for the various other reasons set forth in said bill of complaint.

At the hearing before the district judge petitioner introduced in evidence the affidavit of W. M. Reid, executive secretary of The Rice Millers' Association, a man of twenty-six years' experience in the rice business, in which affidavit he set out fully and

in detail the methods of conducting the rice business and the manner in which the rough rice market and the clean rice market is made, showing that it would be utterly impossible for any rice miller to accurately determine whether he had made a profit or a loss on any given transaction, much less prove whether he had passed the tax, or any part thereof, on. Petitioner also introduced in evidence the affidavit of Homer L. Bruce, a practicing attorney at the bar at Houston, Texas, setting out in detail the proceedings under a complaint brought by the Secretary of Agriculture to revoke the license of a rice mill under the Act in effect prior to the present Act. The Secretary of Agriculture sought to revoke the license of this mill for failure to sell clean rice and rice products processed from rough rice at a price approximately 89 cents higher than the price paid for the rough rice. The affidavit showed that, although the government was able to prove the cost of the rough rice and to trace the particular rough rice into various "mixes" of clean rice and the price procured for these "mixes" of clean rice, it was never able to prove that the price procured for the clean rice processed from the particular lot of rough rice, was not 89 cents more than the price paid for the rough rice, because of the fact that clean rice is customarily sold in "mixes" of various lots of rice and there was no way to allocate the price procured for the mixed rice sold to the various lots of rough rice which went into the mix.

In the meantime, petitioner alleges that for the foregoing reasons and those set forth in its said

bill of complaint in said cause, and because the judge of said District Court in his said order dismissed said bill of complaint and refused to grant petitioner the injunction prayed for pending the appeal in this case, and because the Circuit Court of Appeals has denied petitioner's application for an injunction pending the hearing of its appeal, and because it will be several months before said Circuit Court of Appeals will hear its appeal and because the Circuit Court of Appeals in its opinion and order denying petitioner its said injunction has virtually decided and disposed of petitioner's appeal for all practical purposes, the respondent herein will, to the irreparable damage and loss of the petitioner herein, proceed to collect the said taxes for September, 1935, which are now due and unpaid, from petitioner, and said taxes for subsequent months, unless restrained by a preliminary injunction granted by this Court. The petitioner alleges that not only has it no complete remedy at law, but in fact no remedy at law at all, for the reasons hereinabove set forth and set forth more in detail in said bill of complaint, that it is faced with the alternative of paying the tax with the certainty that no remedy at law exists for its recovery in case it be held that it was unconstitutionally assessed, or of refusing to pay and running the risk of becoming liable for the heavy civil and criminal penalties provided in the Act, and that the said judge of said District Court should not have dismissed said bill of complaint, but should have overruled the same, and upon the hearing should have granted the prelimi-

nary injunction as prayed for in said bill of complaint, and the Circuit Court of Appeals should have granted petitioner the injunction pending its appeal.

Petitioner would further show that there is now pending in the Supreme Court of the United States a case involving the constitutionality of the said Agricultural Adjustment Act, being the same case in which the Circuit Court of Appeals for the First Circuit declared the Act to be unconstitutional, and that the Supreme Court has set said cause for oral argument on Monday, December 9, 1935; that a decision by the Supreme Court of the United States upon the validity of the said Act may be expected within a reasonable time thereafter; that the first benefit payment to farmers provided for in said Act has been made, and that under the standard form of contract between the Secretary of Agriculture and rice farmers no further payment is due until such time after December 1, 1935, as the secretary shall determine and declare what further amount of benefit payments shall be made and when they shall be made; that the taxes to be collected under said Act are for the purpose of making these benefit payments and that since the Secretary of Agriculture need make no further benefit payments until such time after December 1, 1935, as may be fixed by him, the delay of the Government in collecting these taxes which might be occasioned by the granting of the injunction prayed for herein will not occasion any injury to the Government nor will it unduly interfere with the achievement of the program set out in said Act if the Act be held constitutional. On the

other hand, as hereinabove alleged, great and irreparable damage will be done to petitioner in the event the law is held unconstitutional unless the injunction hereinafter prayed for is granted.

Petitioner further shows that it is informed that every other Circuit Court of Appeals to consider the question, namely, the Second, Sixth, Eighth, Ninth and Tenth, has granted injunctions pending appeal contrary to the action herein by the Circuit Court of Appeals for the Fifth Circuit.

Petitioner further shows that unless an injunction pending appeal be granted so as to preserve the *status quo,* the subject-matter of the suit will be lost and the jurisdiction of this Honorable Court defeated. Such injunction is necessary to preserve the jurisdiction of this Honorable Court, and in order that petitioner may enjoy the just fruits of a favorable decision herein.

The petitioner states that it is ready and willing to give any reasonable bond or other security that may be required by any order of this Court, including the deposit from month to month of the amount of tax due, in a depository to be designated by the Court, and therefore prays that this Court make an order granting petitioner a preliminary injunction enjoining and restraining the respondent, and his successors in office, from assessing or collecting or attempting to assess or collect from petitioner in any manner whatsoever, whether by lien or jeopardy or distraint proceeding, in court or otherwise, the said processing taxes for the month of September and subsequent months and any other processing taxes

under and pursuant to said Agricultural Adjustment Act upon rice processed by petitioner, and any interest or penalty on account of petitioner's failure to pay said processing taxes, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the petitioner, pending the hearing of petitioner's petition to this Honorable Court for a writ of certiorari in this cause, and if said petition is granted, pending the hearing of this cause by this Honorable Court, and upon such conditions and terms as to this Court may seem just.

HOMER L. BRUCE,

JOHN P. BULLINGTON,
Attorneys for Petitioner.
Houston, Texas.

BAKER, BOTTS, ANDREWS & WHARTON,
Of Counsel.
Houston, Texas.

STATE OF TEXAS,
COUNTY OF HARRIS.

Before me, the undersigned authority, on this day personally appeared John P. Bullington, known to me and who being by me duly sworn, deposed and said on his oath as follows: That he is one of counsel for petitioner in the above cause, and has read the foregoing motion; that he is personally familiar with the matters and things therein alleged, and that the same are true except as to such matters as are alleged on information and belief, and as to them he believes them to be true. He further states that he is a member of the bar of this Honorable Court and has made a careful examination of applicable decisions of this Honorable Court and is of the opinion that the relief herein prayed for should be granted under such decisions.

Sworn to and subscribed before me this the 8th day of November, A. D. 1935.

[SEAL]

RAYMOND NEILSON,
Notary Public in and for Harris County, Texas.

Supreme Court of the United States

OCTOBER TERM, 1935

No. 559

A. B. DORE
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

MOTION FOR INJUNCTION TO PRESERVE STATUS QUO

HOMER L. BRUCE,
JOHN P. BULLINGTON,
Attorneys for Petitioner.
Houston, Texas.

BAKER, BOTTS, ANDREWS & WHARTON,
Of Counsel.
Houston, Texas.

No.....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

A. B. DORE
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

MOTION FOR INJUNCTION TO PRESERVE STATUS QUO

TO THE HONORABLE BENJAMIN N. CARDOZO, *Associate Justice of the Supreme Court of the United States:*

Comes now A. B. Dore, by his counsel, Homer L. Bruce and John P. Bullington, and respectfully states that petitioner on October 25, 1935, brought a bill in equity in the United States District Court for the Eastern District of Louisiana, New Orleans Division, entitled A. B. Dore, Plaintiff, v. Rufus W. Fontenot, Individually and as

Acting United States Collector of Internal Revenue for the District of Louisiana, Defendant, and numbered 322 in Equity in the New Orleans Division of said court. In his bill of complaint in said cause petitioner prayed for a temporary restraining order to be issued immediately, and for a preliminary injunction after notice to the respondent, and for a permanent injunction on the final hearing of said cause, enjoining the respondent from assessing or collecting or attempting to assess or collect from the petitioner in any manner whatsoever, whether by lien or jeopardy or distraint proceedings, in court or otherwise, any processing taxes levied under and pursuant to the Act of the Congress of the United States known as the Agricultural Adjustment Act, and amendments thereto, or purported to be levied by said Act, upon the petitioner for the processing of rice during the month of September, 1935, and for subsequent months, and any interest or penalty on account of petitioner's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of petitioner. Said application for preliminary injunction was set down for hearing before the judge of said District Court at New Orleans on Monday, October 28, 1935. Notice thereof was duly waived by respondent. Prior to said hearing respondent filed his motion to dismiss said bill, copies of which motion and also of petitioner's bill of complaint are contained in the record in this cause now brought to this Court on petition for certiorari.

After a hearing on petitioner's motion for preliminary injunction and on respondent's motion to dismiss, the Honorable John McDuffie, acting judge of said District Court, on October 28, 1935, refused petitioner's motion for preliminary injunction, granted the motion of respondent to dismiss the said bill of complaint, and dismissed the said bill of complaint, to which petitioner herein duly excepted. Thereafter on the 29th day of October, 1935, the petitioner herein in open court and in the presence of counsel for respondent filed its petition for an appeal, which was duly allowed by the said judge of the United States District Court who tried said cause, and filed at the same time its assignments of error, and also a cost bond was duly filed and approved by the said judge of said District Court. At the time petitioner presented its said petition for appeal, it also petitioned said judge of the District Court to grant it an injunction enjoining the respondent in the manner set out in its request for a preliminary injunction in its bill of complaint, pending the appeal of petitioner to the Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, but the said judge of said District Court refused petitioner's said petition and refused to grant petitioner said injunction pending said appeal.

Petitioner perfected its appeal to the Circuit Court of Appeals for the Fifth Circuit, making said cause returnable at New Orleans, Louisiana, as provided by law, and duly caused to be prepared a transcript of the record in said cause and filed the

same, in accordance with law and within the time allowed by law, in the office of the clerk of said Circuit Court of Appeals at New Orleans, Louisiana, and said cause was duly docketed in that Court as "A. B. Dore, Appellant, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, No. 7945."

On November 4, 1935, after notice to respondent, petitioner filed in said Circuit Court of Appeals its motion for a preliminary injunction pending the hearing of its appeal enjoining respondent from assessing or collecting from petitioner said taxes. The Circuit Court of Appeals on November 5, 1935, denied petitioner's said motion, stating in its opinion that

> "the taxpayer has a remedy at law to recover back any taxes illegally exacted, and, further that the provisions of the Act as amended deprive the Court of jurisdiction to grant injunctive relief."

Both in the District Court and in the Circuit Court of Appeals petitioner offered to give such security as the court might require in the event the court should ultimately decide the cause against petitioner.

Petitioner has filed in the Supreme Court of the United States its petition for a writ of certiorari in this cause and the record therein.

In said bill of complaint petitioner alleged that the amount of processing taxes on account of the

rice processed by the petitioner during the month of September, 1935, was $18,546.65, and that under said Agricultural Adjustment Act petitioner was required to pay said amount to respondent on or before October 30, 1935, and that respondent was charged with the duty of collecting said tax, and if said tax were not paid on or before October 30, 1935, respondent would assess said tax against the petitioner and serve upon petitioner notice and demand for the payment thereof and would allow petitioner ten days from receipt of such notice within which to pay the same; that in the event said tax should not be paid within said time, respondent would assess against petitioner a penalty equal to 5 per cent of the amount of the tax and interest on the tax at the rate of 1 per cent per month from the due date of the tax until paid; that if the petitioner failed to pay the tax within said ten days, respondent would proceed to collect the tax, penalty and interest by filing a notice of lien on all of petitioner's property and by distraining upon and selling such of petitioner's property as might be necessary to realize the amount of said tax, penalties and interest; and that additional processing taxes for months subsequent to September, 1935, will accrue and be assessed against and collected from the petitioner in the same manner as the tax for the month of September.

Petitioner alleged that the said processing tax was illegal and unconstitutional, and violated various provisions of the Constitution of the United States in many particulars, more fully set forth in peti-

tioner's bill of complaint. The petitioner also alleged that under an amendment to said Agricultural Adjustment Act approved on August 24, 1935, a Section 21(d) was added to said Act, which section provides in substances that petitioner should be allowed no recovery of any of said taxes paid, if the same should be illegal or unconstitutional, unless petitioner established to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner should so find, that neither petitioner nor any person directly or indirectly under petitioner's control or having control over petitioner, has, directly or indirectly, included such amount in the price of the rice with respect to which it was imposed or of any article processed from the rice with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing rice, and that the price paid by the petitioner or such person for said rice was not reduced by any part of such amount. Petitioner in said bill of complaint, alleged, as more fully set out therein, that under said Section 21 (d) it had no adequate remedy at law by which it could recover any part of said taxes if same were unconstitutional and illegal, and that it was impossible, owing to the peculiar conditions existing in the rice milling industry and in the purchase, milling and sale of rice, for petitioner to discharge the burden placed upon it by said Section 21 (d), all as more fully set out in petitioner's bill of complaint.

Petitioner further alleged that in said amendment of August 24, 1935, a new section known as Section 21 (a) was added to said Agricultural Adjustment Act, which in substance provided that no suit to enjoin the collection of said processing taxes should be maintained in any court. Petitioner further alleged that said section was not intended to apply, and did not apply, to the injunction prayed for by petitioner, inasmuch as petitioner had no adequate remedy at law. Petitioner further alleged that if said section should be interpreted as prohibiting the injunction prayed for by petitioner, then the said section, together with the other provisions of said Act, was invalid and in violation of the Fifth Amendment to the Constitution, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes would be collected from petitioner and petitioner would have no remedy by which it could recover taxes and would have no remedy to prevent the collection of said unlawful taxes and would be forever deprived of the right to test the constitutionality of said taxes.

Petitioner further alleged that said Section 21 (d) denied the petitioner a complete and adequate remedy at law for the various other reasons set forth in said bill of complaint.

At the hearing before the district judge petitioner introduced in evidence the affidavit of W. M. Reid, executive secretary of The Rice Millers' Association, a man of twenty-six years' experience in the rice business, in which affidavit he set out fully and

in detail the methods of conducting the rice business and the manner in which the rough rice market and the clean rice market is made, showing that it would be utterly impossible for any rice miller to accurately determine whether he had made a profit or a loss on any given transaction, much less prove whether he had passed the tax, or any part thereof, on. Petitioner also introduced in evidence the affidavit of Homer L. Bruce, a practicing attorney at the bar at Houston, Texas, setting out in detail the proceedings under a complaint brought by the Secretary of Agriculture to revoke the license of a rice mill under the Act in effect prior to the present Act. The Secretary of Agriculture sought to revoke the license of this mill for failure to sell clean rice and rice products processed from rough rice at a price approximately 89 cents higher than the price paid for the rough rice. The affidavit showed that, although the government was able to prove the cost of the rough rice and to trace the particular rough rice into various "mixes" of clean rice and the price procured for these "mixes" of clean rice, it was never able to prove that the price procured for the clean rice processed from the particular lot of rough rice, was not 89 cents more than the price paid for the rough rice, because of the fact that clean rice is customarily sold in "mixes" of various lots of rice and there was no way to allocate the price procured for the mixed rice sold to the various lots of rough rice which went into the mix.

In the meantime, petitioner alleges that for the foregoing reasons and those set forth in its said

bill of complaint in said cause, and because the judge of said District Court in his said order dismissed said bill of complaint and refused to grant petitioner the injunction prayed for pending the appeal in this case, and because the Circuit Court of Appeals has denied petitioner's application for an injunction pending the hearing of its appeal, and because it will be several months before said Circuit Court of Appeals will hear its appeal and because the Circuit Court of Appeals in its opinion and order denying petitioner its said injunction has virtually decided and disposed of petitioner's appeal for all practical purposes, the respondent herein will, to the irreparable damage and loss of the petitioner herein, proceed to collect the said taxes for September, 1935, which are now due and unpaid, from petitioner, and said taxes for subsequent months, unless restrained by a preliminary injunction granted by this Court. The petitioner alleges that not only has it no complete remedy at law, but in fact no remedy at law at all, for the reasons hereinabove set forth and set forth more in detail in said bill of complaint, that it is faced with the alternative of paying the tax with the certainty that no remedy at law exists for its recovery in case it be held that it was unconstitutionally assessed, or of refusing to pay and running the risk of becoming liable for the heavy civil and criminal penalties provided in the Act, and that the said judge of said District Court should not have dismissed said bill of complaint, but should have overruled the same, and upon the hearing should have granted the prelimi-

nary injunction as prayed for in said bill of complaint, and the Circuit Court of Appeals should have granted petitioner the injunction pending its appeal.

Petitioner would further show that there is now pending in the Supreme Court of the United States a case involving the constitutionality of the said Agricultural Adjustment Act, being the same case in which the Circuit Court of Appeals for the First Circuit declared the Act to be unconstitutional, and that the Supreme Court has set said cause for oral argument on Monday, December 9, 1935; that a decision by the Supreme Court of the United States upon the validity of the said Act may be expected within a reasonable time thereafter; that the first benefit payment to farmers provided for in said Act has been made, and that under the standard form of contract between the Secretary of Agriculture and rice farmers no further payment is due until such time after December 1, 1935, as the secretary shall determine and declare what further amount of benefit payments shall be made and when they shall be made; that the taxes to be collected under said Act are for the purpose of making these benefit payments and that since the Secretary of Agriculture need make no further benefit payments until such time after December 1, 1935, as may be fixed by him, the delay of the Government in collecting these taxes which might be occasioned by the granting of the injunction prayed for herein will not occasion any injury to the Government nor will it unduly interfere with the achievement of the program set out in said Act if the Act be held constitutional. On the

other hand, as hereinabove alleged, great and irreparable damage will be done to petitioner in the event the law is held unconstitutional unless the injunction hereinafter prayed for is granted.

Petitioner further shows that it is informed that every other Circuit Court of Appeals to consider the question, namely, the Second, Sixth, Eighth, Ninth and Tenth, has granted injunctions pending appeal contrary to the action herein by the Circuit Court of Appeals for the Fifth Circuit.

Petitioner further shows that unless an injunction pending appeal be granted so as to preserve the *status quo,* the subject-matter of the suit will be lost and the jurisdiction of this Honorable Court defeated. Such injunction is necessary to preserve the jurisdiction of this Honorable Court, and in order that petitioner may enjoy the just fruits of a favorable decision herein.

The petitioner states that it is ready and willing to give any reasonable bond or other security that may be required by any order of this Court, including the deposit from month to month of the amount of tax due, in a depository to be designated by the Court, and therefore prays that this Court make an order granting petitioner a preliminary injunction enjoining and restraining the respondent, and his successors in office, from assessing or collecting or attempting to assess or collect from petitioner in any manner whatsoever, whether by lien or jeopardy or distraint proceeding, in court or otherwise, the said processing taxes for the month of September and subsequent months and any other processing taxes

under and pursuant to said Agricultural Adjustment Act upon rice processed by petitioner, and any interest or penalty on account of petitioner's failure to pay said processing taxes, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the petitioner, pending the hearing of petitioner's petition to this Honorable Court for a writ of certiorari in this cause, and if said petition is granted, pending the hearing of this cause by this Honorable Court, and upon such conditions and terms as to this Court may seem just.

HOMER L. BRUCE,

JOHN P. BULLINGTON,
Attorneys for Petitioner.
Houston, Texas.

BAKER, BOTTS, ANDREWS & WHARTON,
Of Counsel.
Houston, Texas.

STATE OF TEXAS,
COUNTY OF HARRIS.

Before me, the undersigned authority, on this day personally appeared John P. Bullington, known to me and who being by me duly sworn, deposed and said on his oath as follows: That he is one of counsel for petitioner in the above cause, and has read the foregoing motion; that he is personally familiar with the matters and things therein alleged, and that the same are true except as to such matters as are alleged on information and belief, and as to them he believes them to be true. He further states that he is a member of the bar of this Honorable Court and has made a careful examination of applicable decisions of this Honorable Court and is of the opinion that the relief herein prayed for should be granted under such decisions.

Sworn to and subscribed before me this the 8th day of November, A. D. 1935.

[SEAL]

RAYMOND NEILSON,
Notary Public in and for Harris County, Texas.

PHOTOCOPY

Supreme Court of the United States

OCTOBER TERM, 1935

No. 549

UNITED RICE MILLING PRODUCTS CO., INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

MOTION FOR INJUNCTION TO PRESERVE STATUS QUO

HOMER L. BRUCE,
JOHN P. BULLINGTON,
Attorneys for Petitioner.
Houston, Texas.

BAKER, BOTTS, ANDREWS & WHARTON,
Of Counsel.
Houston, Texas.

No.....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

UNITED RICE MILLING PRODUCTS CO., INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

MOTION FOR INJUNCTION TO PRESERVE STATUS QUO

TO THE HONORABLE BENJAMIN N. CARDOZO, *Associate Justice of the Supreme Court of the United States:*

Comes now United Rice Milling Products Co., Inc., by its counsel, Homer L. Bruce and John P. Bullington, and respectfully states that petitioner on October 25, 1935, brought a bill in equity in the United States District Court for the Eastern District of Louisiana, New Orleans Division, entitled United Rice Milling Products Co., Inc., Plaintiff, v. Rufus W. Fontenot, Individually and as

Acting United States Collector of Internal Revenue for the District of Louisiana, Defendant, and numbered 323 in Equity in the New Orleans Division of said court. In its bill of complaint in said cause petitioner prayed for a temporary restraining order to be issued immediately, and for a preliminary injunction after notice to the respondent, and for a permanent injunction on the final hearing of said cause, enjoining the respondent from assessing or collecting or attempting to assess or collect from the petitioner in any manner whatsoever, whether by lien or jeopardy or distraint proceedings, in court or otherwise, any processing taxes levied under and pursuant to the Act of the Congress of the United States known as the Agricultural Adjustment Act, and amendments thereto, or purported to be levied by said Act, upon the petitioner for the processing of rice during the month of September, 1935, and for subsequent months, and any interest or penalty on account of petitioner's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of petitioner. Said application for preliminary injunction was set down for hearing before the judge of said District Court at New Orleans on Monday, October 28, 1935. Notice thereof was duly waived by respondent. Prior to said hearing respondent filed his motion to dismiss said bill, copies of which motion and also of petitioner's bill of complaint are contained in the record in this cause now brought to this Court on petition for certiorari.

After a hearing on petitioner's motion for preliminary injunction and on respondent's motion to dismiss, the Honorable John McDuffie, acting judge of said District Court, on October 28, 1935, refused petitioner's motion for preliminary injunction, granted the motion of respondent to dismiss the said bill of complaint, and dismissed the said bill of complaint, to which petitioner herein duly excepted. Thereafter on the 29th day of October, 1935, the petitioner herein in open court and in the presence of counsel for respondent filed its petition for an appeal, which was duly allowed by the said judge of the United States District Court who tried said cause, and filed at the same time its assignments of error, and also a cost bond was duly filed and approved by the said judge of said District Court. At the time petitioner presented its said petition for appeal, it also petitioned said judge of the District Court to grant it an injunction enjoining the respondent in the manner set out in its request for a preliminary injunction in its bill of complaint, pending the appeal of petitioner to the Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, but the said judge of said District Court refused petitioner's said petition and refused to grant petitioner said injunction pending said appeal.

Petitioner perfected its appeal to the Circuit Court of Appeals for the Fifth Circuit, making said cause returnable at New Orleans, Louisiana, as provided by law, and duly caused to be prepared a transcript of the record in said cause and filed the

same, in accordance with law and within the time allowed by law, in the office of the clerk of said Circuit Court of Appeals at New Orleans, Louisiana, and said cause was duly docketed in that Court as "United Rice Milling Products Co., Inc., Appellant, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, No. 7946."

On November 4, 1935, after notice to respondent, petitioner filed in said Circuit Court of Appeals its motion for a preliminary injunction pending the hearing of its appeal enjoining respondent from assessing or collecting from petitioner said taxes. The Circuit Court of Appeals on November 5, 1935, denied petitioner's said motion, stating in its opinion that

> "the taxpayer has a remedy at law to recover back any taxes illegally exacted, and, further that the provisions of the Act as amended deprive the Court of jurisdiction to grant injunctive relief."

Both in the District Court and in the Circuit Court of Appeals petitioner offered to give such security as the court might require in the event the court should ultimately decide the cause against petitioner.

Petitioner has filed in the Supreme Court of the United States its petition for a writ of certiorari in this cause and the record therein.

In said bill of complaint petitioner alleged that the amount of processing taxes on account of the

rice processed by the petitioner during the month of September, 1935, was $31,839.40, and that under said Agricultural Adjustment Act petitioner was required to pay said amount to respondent on or before October 30, 1935, and that respondent was charged with the duty of collecting said tax, and if said tax were not paid on or before October 30, 1935, respondent would assess said tax against the petitioner and serve upon petitioner notice and demand for the payment thereof and would allow petitioner ten days from receipt of such notice within which to pay the same; that in the event said tax should not be paid within said time, respondent would assess against petitioner a penalty equal to 5 per cent of the amount of the tax and interest on the tax at the rate of 1 per cent per month from the due date of the tax until paid; that if the petitioner failed to pay the tax within said ten days, respondent would proceed to collect the tax, penalty and interest by filing a notice of lien on all of petitioner's property and by distraining upon and selling such of petitioner's property as might be necessary to realize the amount of said tax, penalties and interest; and that additional processing taxes for months subsequent to September, 1935, will accrue and be assessed against and collected from the petitioner in the same manner as the tax for the month of September.

Petitioner alleged that the said processing tax was illegal and unconstitutional, and violated various provisions of the Constitution of the United States in many particulars, more fully set forth in peti-

tioner's bill of complaint. The petitioner also alleged that under an amendment to said Agricultural Adjustment Act approved on August 24, 1935, a Section 21(d) was added to said Act, which section provides in substances that petitioner should be allowed no recovery of any of said taxes paid, if the same should be illegal or unconstitutional, unless petitioner established to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner should so find, that neither petitioner nor any person directly or indirectly under petitioner's control or having control over petitioner, has, directly or indirectly, included such amount in the price of the rice with respect to which it was imposed or of any article processed from the rice with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing rice, and that the price paid by the petitioner or such person for said rice was not reduced by any part of such amount. Petitioner in said bill of complaint, alleged, as more fully set out therein, that under said Section 21 (d) it had no adequate remedy at law by which it could recover any part of said taxes if same were unconstitutional and illegal, and that it was impossible, owing to the peculiar conditions existing in the rice milling industry and in the purchase, milling and sale of rice, for petitioner to discharge the burden placed upon it by said Section 21 (d), all as more fully set out in petitioner's bill of complaint.

Petitioner further alleged that in said amendment of August 24, 1935, a new section known as Section 21 (a) was added to said Agricultural Adjustment Act, which in substance provided that no suit to enjoin the collection of said processing taxes should be maintained in any court. Petitioner further alleged that said section was not intended to apply, and did not apply, to the injunction prayed for by petitioner, inasmuch as petitioner had no adequate remedy at law. Petitioner further alleged that if said section should be interpreted as prohibiting the injunction prayed for by petitioner, then the said section, together with the other provisions of said Act, was invalid and in violation of the Fifth Amendment to the Constitution, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes would be collected from petitioner and petitioner would have no remedy by which it could recover taxes and would have no remedy to prevent the collection of said unlawful taxes and would be forever deprived of the right to test the constitutionality of said taxes.

Petitioner further alleged that said Section 21 (d) denied the petitioner a complete and adequate remedy at law for the various other reasons set forth in said bill of complaint.

At the hearing before the district judge petitioner introduced in evidence the affidavit of W. M. Reid, executive secretary of The Rice Millers' Association, a man of twenty-six years' experience in the rice business, in which affidavit he set out fully and

in detail the methods of conducting the rice business and the manner in which the rough rice market and the clean rice market is made, showing that it would be utterly impossible for any rice miller to accurately determine whether he had made a profit or a loss on any given transaction, much less prove whether he had passed the tax, or any part thereof, on. Petitioner also introduced in evidence the affidavit of Homer L. Bruce, a practicing attorney at the bar at Houston, Texas, setting out in detail the proceedings under a complaint brought by the Secretary of Agriculture to revoke the license of a rice mill under the Act in effect prior to the present Act. The Secretary of Agriculture sought to revoke the license of this mill for failure to sell clean rice and rice products processed from rough rice at a price approximately 89 cents higher than the price paid for the rough rice. The affidavit showed that, although the government was able to prove the cost of the rough rice and to trace the particular rough rice into various "mixes" of clean rice and the price procured for these "mixes" of clean rice, it was never able to prove that the price procured for the clean rice processed from the particular lot of rough rice, was not 89 cents more than the price paid for the rough rice, because of the fact that clean rice is customarily sold in "mixes" of various lots of rice and there was no way to allocate the price procured for the mixed rice sold to the various lots of rough rice which went into the mix.

In the meantime, petitioner alleges that for the foregoing reasons and those set forth in its said

bill of complaint in said cause, and because the judge of said District Court in his said order dismissed said bill of complaint and refused to grant petitioner the injunction prayed for pending the appeal in this case, and because the Circuit Court of Appeals has denied petitioner's application for an injunction pending the hearing of its appeal, and because it will be several months before said Circuit Court of Appeals will hear its appeal and because the Circuit Court of Appeals in its opinion and order denying petitioner its said injunction has virtually decided and disposed of petitioner's appeal for all practical purposes, the respondent herein will, to the irreparable damage and loss of the petitioner herein, proceed to collect the said taxes for September, 1935, which are now due and unpaid, from petitioner, and said taxes for subsequent months, unless restrained by a preliminary injunction granted by this Court. The petitioner alleges that not only has it no complete remedy at law, but in fact no remedy at law at all, for the reasons hereinabove set forth and set forth more in detail in said bill of complaint, that it is faced with the alternative of paying the tax with the certainty that no remedy at law exists for its recovery in case it be held that it was unconstitutionally assessed, or of refusing to pay and running the risk of becoming liable for the heavy civil and criminal penalties provided in the Act, and that the said judge of said District Court should not have dismissed said bill of complaint, but should have overruled the same, and upon the hearing should have granted the prelimi-

nary injunction as prayed for in said bill of complaint, and the Circuit Court of Appeals should have granted petitioner the injunction pending its appeal.

Petitioner would further show that there is now pending in the Supreme Court of the United States a case involving the constitutionality of the said Agricultural Adjustment Act, being the same case in which the Circuit Court of Appeals for the First Circuit declared the Act to be unconstitutional, and that the Supreme Court has set said cause for oral argument on Monday, December 9, 1935; that a decision by the Supreme Court of the United States upon the validity of the said Act may be expected within a reasonable time thereafter; that the first benefit payment to farmers provided for in said Act has been made, and that under the standard form of contract between the Secretary of Agriculture and rice farmers no further payment is due until such time after December 1, 1935, as the secretary shall determine and declare what further amount of benefit payments shall be made and when they shall be made; that the taxes to be collected under said Act are for the purpose of making these benefit payments and that since the Secretary of Agriculture need make no further benefit payments until such time after December 1, 1935, as may be fixed by him, the delay of the Government in collecting these taxes which might be occasioned by the granting of the injunction prayed for herein will not occasion any injury to the Government nor will it unduly interfere with the achievement of the program set out in said Act if the Act be held constitutional. On the

other hand, as hereinabove alleged, great and irreparable damage will be done to petitioner in the event the law is held unconstitutional unless the injunction hereinafter prayed for is granted.

Petitioner further shows that it is informed that every other Circuit Court of Appeals to consider the question, namely, the Second, Sixth, Eighth, Ninth and Tenth, has granted injunctions pending appeal contrary to the action herein by the Circuit Court of Appeals for the Fifth Circuit.

Petitioner further shows that unless an injunction pending appeal be granted so as to preserve the *status quo,* the subject-matter of the suit will be lost and the jurisdiction of this Honorable Court defeated. Such injunction is necessary to preserve the jurisdiction of this Honorable Court, and in order that petitioner may enjoy the just fruits of a favorable decision herein.

The petitioner states that it is ready and willing to give any reasonable bond or other security that may be required by any order of this Court, including the deposit from month to month of the amount of tax due, in a depository to be designated by the Court, and therefore prays that this Court make an order granting petitioner a preliminary injunction enjoining and restraining the respondent, and his successors in office, from assessing or collecting or attempting to assess or collect from petitioner in any manner whatsoever, whether by lien or jeopardy or distraint proceeding, in court or otherwise, the said processing taxes for the month of September and subsequent months and any other processing taxes

under and pursuant to said Agricultural Adjustment Act upon rice processed by petitioner, and any interest or penalty on account of petitioner's failure to pay said processing taxes, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the petitioner, pending the hearing of petitioner's petition to this Honorable Court for a writ of certiorari in this cause, and if said petition is granted, pending the hearing of this cause by this Honorable Court, and upon such conditions and terms as to this Court may seem just.

HOMER L. BRUCE,

JOHN P. BULLINGTON,
Attorneys for Petitioner.
Houston, Texas.

BAKER, BOTTS, ANDREWS & WHARTON,
Of Counsel.
Houston, Texas.

STATE OF TEXAS,
COUNTY OF HARRIS.

Before me, the undersigned authority, on this day personally appeared John P. Bullington, known to me and who being by me duly sworn, deposed and said on his oath as follows: That he is one of counsel for petitioner in the above cause, and has read the foregoing motion; that he is personally familiar with the matters and things therein alleged, and that the same are true except as to such matters as are alleged on information and belief, and as to them he believes them to be true. He further states that he is a member of the bar of this Honorable Court and has made a careful examination of applicable decisions of this Honorable Court and is of the opinion that the relief herein prayed for should be granted under such decisions.

Sworn to and subscribed before me this the 8th day of November, A. D. 1935.

[SEAL]

RAYMOND NEILSON,
Notary Public in and for Harris County, Texas.

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1935

No. 581

BATON ROUGE RICE MILL, INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

MOTION FOR INJUNCTION TO PRESERVE STATUS QUO

HOMER L. BRUCE,
JOHN P. BULLINGTON,
Attorneys for Petitioner.
Houston, Texas.

BAKER, BOTTS, ANDREWS & WHARTON,
Of Counsel.
Houston, Texas.

No.....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

BATON ROUGE RICE MILL, INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

MOTION FOR INJUNCTION TO PRESERVE STATUS QUO

TO THE HONORABLE BENJAMIN N. CARDOZO, *Associate Justice of the Supreme Court of the United States:*

Comes now Baton Rouge Rice Mill, Inc., by its counsel, Homer L. Bruce and John P. Bullington, and respectfully states that petitioner on October 25, 1935, brought a bill in equity in the United States District Court for the Eastern District of Louisiana, New Orleans Division, entitled Baton Rouge Rice Mill, Inc., Plaintiff, v. Rufus W. Fontenot, Individually and as

Acting United States Collector of Internal Revenue for the District of Louisiana, Defendant, and numbered 324 in Equity in the New Orleans Division of said court. In its bill of complaint in said cause petitioner prayed for a temporary restraining order to be issued immediately, and for a preliminary injunction after notice to the respondent, and for a permanent injunction on the final hearing of said cause, enjoining the respondent from assessing or collecting or attempting to assess or collect from the petitioner in any manner whatsoever, whether by lien or jeopardy or distraint proceedings, in court or otherwise, any processing taxes levied under and pursuant to the Act of the Congress of the United States known as the Agricultural Adjustment Act, and amendments thereto, or purported to be levied by said Act, upon the petitioner for the processing of rice during the month of September, 1935, and for subsequent months, and any interest or penalty on account of petitioner's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of petitioner. Said application for preliminary injunction was set down for hearing before the judge of said District Court at New Orleans on Monday, October 28, 1935. Notice thereof was duly waived by respondent. Prior to said hearing respondent filed his motion to dismiss said bill, copies of which motion and also of petitioner's bill of complaint are contained in the record in this cause now brought to this Court on petition for certiorari.

After a hearing on petitioner's motion for preliminary injunction and on respondent's motion to dismiss, the Honorable John McDuffie, acting judge of said District Court, on October 28, 1935, refused petitioner's motion for preliminary injunction, granted the motion of respondent to dismiss the said bill of complaint, and dismissed the said bill of complaint, to which petitioner herein duly excepted. Thereafter on the 29th day of October, 1935, the petitioner herein in open court and in the presence of counsel for respondent filed its petition for an appeal, which was duly allowed by the said judge of the United States District Court who tried said cause, and filed at the same time its assignments of error, and also a cost bond was duly filed and approved by the said judge of said District Court. At the time petitioner presented its said petition for appeal, it also petitioned said judge of the District Court to grant it an injunction enjoining the respondent in the manner set out in its request for a preliminary injunction in its bill of complaint, pending the appeal of petitioner to the Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, but the said judge of said District Court refused petitioner's said petition and refused to grant petitioner said injunction pending said appeal.

Petitioner perfected its appeal to the Circuit Court of Appeals for the Fifth Circuit, making said cause returnable at New Orleans, Louisiana, as provided by law, and duly caused to be prepared a transcript of the record in said cause and filed the

same, in accordance with law and within the time allowed by law, in the office of the clerk of said Circuit Court of Appeals at New Orleans, Louisiana, and said cause was duly docketed in that Court as "Baton Rouge Rice Mill, Inc., Appellant, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, No. 7947."

On November 4, 1935, after notice to respondent, petitioner filed in said Circuit Court of Appeals its motion for a preliminary injunction pending the hearing of its appeal enjoining respondent from assessing or collecting from petitioner said taxes. The Circuit Court of Appeals on November 5, 1935, denied petitioner's said motion, stating in its opinion that

> "the taxpayer has a remedy at law to recover back any taxes illegally exacted, and, further that the provisions of the Act as amended deprive the Court of jurisdiction to grant injunctive relief."

Both in the District Court and in the Circuit Court of Appeals petitioner offered to give such security as the court might require in the event the court should ultimately decide the cause against petitioner.

Petitioner has filed in the Supreme Court of the United States its petition for a writ of certiorari in this cause and the record therein.

In said bill of complaint petitioner alleged that the amount of processing taxes on account of the

rice processed by the petitioner during the month of September, 1935, was $51,259.14, and that under said Agricultural Adjustment Act petitioner was required to pay said amount to respondent on or before October 30, 1935, and that respondent was charged with the duty of collecting said tax, and if said tax were not paid on or before October 30, 1935, respondent would assess said tax against the petitioner and serve upon petitioner notice and demand for the payment thereof and would allow petitioner ten days from receipt of such notice within which to pay the same; that in the event said tax should not be paid within said time, respondent would assess against petitioner a penalty equal to 5 per cent of the amount of the tax and interest on the tax at the rate of 1 per cent per month from the due date of the tax until paid; that if the petitioner failed to pay the tax within said ten days, respondent would proceed to collect the tax, penalty and interest by filing a notice of lien on all of petitioner's property and by distraining upon and selling such of petitioner's property as might be necessary to realize the amount of said tax, penalties and interest; and that additional processing taxes for months subsequent to September, 1935, will accrue and be assessed against and collected from the petitioner in the same manner as the tax for the month of September.

Petitioner alleged that the said processing tax was illegal and unconstitutional, and violated various provisions of the Constitution of the United States in many particulars, more fully set forth in peti-

tioner's bill of complaint. The petitioner also alleged that under an amendment to said Agricultural Adjustment Act approved on August 24, 1935, a Section 21(d) was added to said Act, which section provides in substances that petitioner should be allowed no recovery of any of said taxes paid, if the same should be illegal or unconstitutional, unless petitioner established to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner should so find, that neither petitioner nor any person directly or indirectly under petitioner's control or having control over petitioner, has, directly or indirectly, included such amount in the price of the rice with respect to which it was imposed or of any article processed from the rice with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing rice, and that the price paid by the petitioner or such person for said rice was not reduced by any part of such amount. Petitioner in said bill of complaint, alleged, as more fully set out therein, that under said Section 21 (d) it had no adequate remedy at law by which it could recover any part of said taxes if same were unconstitutional and illegal, and that it was impossible, owing to the peculiar conditions existing in the rice milling industry and in the purchase, milling and sale of rice, for petitioner to discharge the burden placed upon it by said Section 21 (d), all as more fully set out in petitioner's bill of complaint.

Petitioner further alleged that in said amendment of August 24, 1935, a new section known as Section 21 (a) was added to said Agricultural Adjustment Act, which in substance provided that no suit to enjoin the collection of said processing taxes should be maintained in any court. Petitioner further alleged that said section was not intended to apply, and did not apply, to the injunction prayed for by petitioner, inasmuch as petitioner had no adequate remedy at law. Petitioner further alleged that if said section should be interpreted as prohibiting the injunction prayed for by petitioner, then the said section, together with the other provisions of said Act, was invalid and in violation of the Fifth Amendment to the Constitution, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes would be collected from petitioner and petitioner would have no remedy by which it could recover taxes and would have no remedy to prevent the collection of said unlawful taxes and would be forever deprived of the right to test the constitutionality of said taxes.

Petitioner further alleged that said Section 21 (d) denied the petitioner a complete and adequate remedy at law for the various other reasons set forth in said bill of complaint.

At the hearing before the district judge petitioner introduced in evidence the affidavit of W. M. Reid, executive secretary of The Rice Millers' Association, a man of twenty-six years' experience in the rice business, in which affidavit he set out fully and

in detail the methods of conducting the rice business and the manner in which the rough rice market and the clean rice market is made, showing that it would be utterly impossible for any rice miller to accurately determine whether he had made a profit or a loss on any given transaction, much less prove whether he had passed the tax, or any part thereof, on. Petitioner also introduced in evidence the affidavit of Homer L. Bruce, a practicing attorney at the bar at Houston, Texas, setting out in detail the proceedings under a complaint brought by the Secretary of Agriculture to revoke the license of a rice mill under the Act in effect prior to the present Act. The Secretary of Agriculture sought to revoke the license of this mill for failure to sell clean rice and rice products processed from rough rice at a price approximately 89 cents higher than the price paid for the rough rice. The affidavit showed that, although the government was able to prove the cost of the rough rice and to trace the particular rough rice into various "mixes" of clean rice and the price procured for these "mixes" of clean rice, it was never able to prove that the price procured for the clean rice processed from the particular lot of rough rice, was not 89 cents more than the price paid for the rough rice, because of the fact that clean rice is customarily sold in "mixes" of various lots of rice and there was no way to allocate the price procured for the mixed rice sold to the various lots of rough rice which went into the mix.

In the meantime, petitioner alleges that for the foregoing reasons and those set forth in its said

bill of complaint in said cause, and because the judge of said District Court in his said order dismissed said bill of complaint and refused to grant petitioner the injunction prayed for pending the appeal in this case, and because the Circuit Court of Appeals has denied petitioner's application for an injunction pending the hearing of its appeal, and because it will be several months before said Circuit Court of Appeals will hear its appeal and because the Circuit Court of Appeals in its opinion and order denying petitioner its said injunction has virtually decided and disposed of petitioner's appeal for all practical purposes, the respondent herein will, to the irreparable damage and loss of the petitioner herein, proceed to collect the said taxes for September, 1935, which are now due and unpaid, from petitioner, and said taxes for subsequent months, unless restrained by a preliminary injunction granted by this Court. The petitioner alleges that not only has it no complete remedy at law, but in fact no remedy at law at all, for the reasons hereinabove set forth and set forth more in detail in said bill of complaint, that it is faced with the alternative of paying the tax with the certainty that no remedy at law exists for its recovery in case it be held that it was unconstitutionally assessed, or of refusing to pay and running the risk of becoming liable for the heavy civil and criminal penalties provided in the Act, and that the said judge of said District Court should not have dismissed said bill of complaint, but should have overruled the same, and upon the hearing should have granted the prelimi-

nary injunction as prayed for in said bill of complaint, and the Circuit Court of Appeals should have granted petitioner the injunction pending its appeal.

Petitioner would further show that there is now pending in the Supreme Court of the United States a case involving the constitutionality of the said Agricultural Adjustment Act, being the same case in which the Circuit Court of Appeals for the First Circuit declared the Act to be unconstitutional, and that the Supreme Court has set said cause for oral argument on Monday, December 9, 1935; that a decision by the Supreme Court of the United States upon the validity of the said Act may be expected within a reasonable time thereafter; that the first benefit payment to farmers provided for in said Act has been made, and that under the standard form of contract between the Secretary of Agriculture and rice farmers no further payment is due until such time after December 1, 1935, as the secretary shall determine and declare what further amount of benefit payments shall be made and when they shall be made; that the taxes to be collected under said Act are for the purpose of making these benefit payments and that since the Secretary of Agriculture need make no further benefit payments until such time after December 1, 1935, as may be fixed by him, the delay of the Government in collecting these taxes which might be occasioned by the granting of the injunction prayed for herein will not occasion any injury to the Government nor will it unduly interfere with the achievement of the program set out in said Act if the Act be held constitutional. On the

other hand, as hereinabove alleged, great and irreparable damage will be done to petitioner in the event the law is held unconstitutional unless the injunction hereinafter prayed for is granted.

Petitioner further shows that it is informed that every other Circuit Court of Appeals to consider the question, namely, the Second, Sixth, Eighth, Ninth and Tenth, has granted injunctions pending appeal contrary to the action herein by the Circuit Court of Appeals for the Fifth Circuit.

Petitioner further shows that unless an injunction pending appeal be granted so as to preserve the *status quo,* the subject-matter of the suit will be lost and the jurisdiction of this Honorable Court defeated. Such injunction is necessary to preserve the jurisdiction of this Honorable Court, and in order that petitioner may enjoy the just fruits of a favorable decision herein.

The petitioner states that it is ready and willing to give any reasonable bond or other security that may be required by any order of this Court, including the deposit from month to month of the amount of tax due, in a depository to be designated by the Court, and therefore prays that this Court make an order granting petitioner a preliminary injunction enjoining and restraining the respondent, and his successors in office, from assessing or collecting or attempting to assess or collect from petitioner in any manner whatsoever, whether by lien or jeopardy or distraint proceeding, in court or otherwise, the said processing taxes for the month of September and subsequent months and any other processing taxes

under and pursuant to said Agricultural Adjustment Act upon rice processed by petitioner, and any interest or penalty on account of petitioner's failure to pay said processing taxes, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the petitioner, pending the hearing of petitioner's petition to this Honorable Court for a writ of certiorari in this cause, and if said petition is granted, pending the hearing of this cause by this Honorable Court, and upon such conditions and terms as to this Court may seem just.

HOMER L. BRUCE,

JOHN P. BULLINGTON,
Attorneys for Petitioner.
Houston, Texas.

BAKER, BOTTS, ANDREWS & WHARTON,
Of Counsel.
Houston, Texas.

STATE OF TEXAS,
COUNTY OF HARRIS.

Before me, the undersigned authority, on this day personally appeared John P. Bullington, known to me and who being by me duly sworn, deposed and said on his oath as follows: That he is one of counsel for petitioner in the above cause, and has read the foregoing motion; that he is personally familiar with the matters and things therein alleged, and that the same are true except as to such matters as are alleged on information and belief, and as to them he believes them to be true. He further states that he is a member of the bar of this Honorable Court and has made a careful examination of applicable decisions of this Honorable Court and is of the opinion that the relief herein prayed for should be granted under such decisions.

Sworn to and subscribed before me this the 8th day of November, A. D. 1935.

[SEAL]

RAYMOND NEILSON,
Notary Public in and for Harris County, Texas.

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1935

No. 581

T. SIMON,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

MOTION FOR INJUNCTION TO PRESERVE STATUS QUO

HOMER L. BRUCE,
JOHN P. BULLINGTON,
Attorneys for Petitioner.
Houston, Texas.

BAKER, BOTTS, ANDREWS & WHARTON,
Of Counsel.
Houston, Texas.

No.....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

T. SIMON,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

MOTION FOR INJUNCTION TO PRESERVE STATUS QUO

TO THE HONORABLE BENJAMIN N. CARDOZO, *Associate Justice of the Supreme Court of the United States:*

Comes now T. Simon, by his counsel, Homer L. Bruce and John P. Bullington, and respectfully states that petitioner on October 25, 1935, brought a bill in equity in the United States District Court for the Eastern District of Louisiana, New Orleans Division, entitled T. Simon, Plaintiff, v. Rufus W. Fontenot, Individually and as

Acting United States Collector of Internal Revenue for the District of Louisiana, Defendant, and numbered 325 in Equity in the New Orleans Division of said court. In his bill of complaint in said cause petitioner prayed for a temporary restraining order to be issued immediately, and for a preliminary injunction after notice to the respondent, and for a permanent injunction on the final hearing of said cause, enjoining the respondent from assessing or collecting or attempting to assess or collect from the petitioner in any manner whatsoever, whether by lien or jeopardy or distraint proceedings, in court or otherwise, any processing taxes levied under and pursuant to the Act of the Congress of the United States known as the Agricultural Adjustment Act, and amendments thereto, or purported to be levied by said Act, upon the petitioner for the processing of rice during the month of September, 1935, and for subsequent months, and any interest or penalty on account of petitioner's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of petitioner. Said application for preliminary injunction was set down for hearing before the judge of said District Court at New Orleans on Monday, October 28, 1935. Notice thereof was duly waived by respondent. Prior to said hearing respondent filed his motion to dismiss said bill, copies of which motion and also of petitioner's bill of complaint are contained in the record in this cause now brought to this Court on petition for certiorari.

After a hearing on petitioner's motion for preliminary injunction and on respondent's motion to dismiss, the Honorable John McDuffie, acting judge of said District Court, on October 28, 1935, refused petitioner's motion for preliminary injunction, granted the motion of respondent to dismiss the said bill of complaint, and dismissed the said bill of complaint, to which petitioner herein duly excepted. Thereafter on the 29th day of October, 1935, the petitioner herein in open court and in the presence of counsel for respondent filed its petition for an appeal, which was duly allowed by the said judge of the United States District Court who tried said cause, and filed at the same time its assignments of error, and also a cost bond was duly filed and approved by the said judge of said District Court. At the time petitioner presented its said petition for appeal, it also petitioned said judge of the District Court to grant it an injunction enjoining the respondent in the manner set out in its request for a preliminary injunction in its bill of complaint, pending the appeal of petitioner to the Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, but the said judge of said District Court refused petitioner's said petition and refused to grant petitioner said injunction pending said appeal.

Petitioner perfected its appeal to the Circuit Court of Appeals for the Fifth Circuit, making said cause returnable at New Orleans, Louisiana, as provided by law, and duly caused to be prepared a transcript of the record in said cause and filed the

same, in accordance with law and within the time allowed by law, in the office of the clerk of said Circuit Court of Appeals at New Orleans, Louisiana, and said cause was duly docketed in that Court as "T. Simon, Appellant, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, No. 7948."

On November 4, 1935, after notice to respondent, petitioner filed in said Circuit Court of Appeals its motion for a preliminary injunction pending the hearing of its appeal enjoining respondent from assessing or collecting from petitioner said taxes. The Circuit Court of Appeals on November 5, 1935, denied petitioner's said motion, stating in its opinion that

> "the taxpayer has a remedy at law to recover back any taxes illegally exacted, and, further that the provisions of the Act as amended deprive the Court of jurisdiction to grant injunctive relief."

Both in the District Court and in the Circuit Court of Appeals petitioner offered to give such security as the court might require in the event the court should ultimately decide the cause against petitioner.

Petitioner has filed in the Supreme Court of the United States its petition for a writ of certiorari in this cause and the record therein.

In said bill of complaint petitioner alleged that the amount of processing taxes on account of the

rice processed by the petitioner during the month of September, 1935, was $33,531.86, and that under said Agricultural Adjustment Act petitioner was required to pay said amount to respondent on or before October 30, 1935, and that respondent was charged with the duty of collecting said tax, and if said tax were not paid on or before October 30, 1935, respondent would assess said tax against the petitioner and serve upon petitioner notice and demand for the payment thereof and would allow petitioner ten days from receipt of such notice within which to pay the same; that in the event said tax should not be paid within said time, respondent would assess against petitioner a penalty equal to 5 per cent of the amount of the tax and interest on the tax at the rate of 1 per cent per month from the due date of the tax until paid; that if the petitioner failed to pay the tax within said ten days, respondent would proceed to collect the tax, penalty and interest by filing a notice of lien on all of petitioner's property and by distraining upon and selling such of petitioner's property as might be necessary to realize the amount of said tax, penalties and interest; and that additional processing taxes for months subsequent to September, 1935, will accrue and be assessed against and collected from the petitioner in the same manner as the tax for the month of September.

Petitioner alleged that the said processing tax was illegal and unconstitutional, and violated various provisions of the Constitution of the United States in many particulars, more fully set forth in peti-

tioner's bill of complaint. The petitioner also alleged that under an amendment to said Agricultural Adjustment Act approved on August 24, 1935, a Section 21(d) was added to said Act, which section provides in substances that petitioner should be allowed no recovery of any of said taxes paid, if the same should be illegal or unconstitutional, unless petitioner established to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner should so find, that neither petitioner nor any person directly or indirectly under petitioner's control or having control over petitioner, has, directly or indirectly, included such amount in the price of the rice with respect to which it was imposed or of any article processed from the rice with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing rice, and that the price paid by the petitioner or such person for said rice was not reduced by any part of such amount. Petitioner in said bill of complaint, alleged, as more fully set out therein, that under said Section 21 (d) it had no adequate remedy at law by which it could recover any part of said taxes if same were unconstitutional and illegal, and that it was impossible, owing to the peculiar conditions existing in the rice milling industry and in the purchase, milling and sale of rice, for petitioner to discharge the burden placed upon it by said Section 21 (d), all as more fully set out in petitioner's bill of complaint.

Petitioner further alleged that in said amendment of August 24, 1935, a new section known as Section 21 (a) was added to said Agricultural Adjustment Act, which in substance provided that no suit to enjoin the collection of said processing taxes should be maintained in any court. Petitioner further alleged that said section was not intended to apply, and did not apply, to the injunction prayed for by petitioner, inasmuch as petitioner had no adequate remedy at law. Petitioner further alleged that if said section should be interpreted as prohibiting the injunction prayed for by petitioner, then the said section, together with the other provisions of said Act, was invalid and in violation of the Fifth Amendment to the Constitution, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes would be collected from petitioner and petitioner would have no remedy by which it could recover taxes and would have no remedy to prevent the collection of said unlawful taxes and would be forever deprived of the right to test the constitutionality of said taxes.

Petitioner further alleged that said Section 21 (d) denied the petitioner a complete and adequate remedy at law for the various other reasons set forth in said bill of complaint.

At the hearing before the district judge petitioner introduced in evidence the affidavit of W. M. Reid, executive secretary of The Rice Millers' Association, a man of twenty-six years' experience in the rice business, in which affidavit he set out fully and

in detail the methods of conducting the rice business and the manner in which the rough rice market and the clean rice market is made, showing that it would be utterly impossible for any rice miller to accurately determine whether he had made a profit or a loss on any given transaction, much less prove whether he had passed the tax, or any part thereof, on. Petitioner also introduced in evidence the affidavit of Homer L. Bruce, a practicing attorney at the bar at Houston, Texas, setting out in detail the proceedings under a complaint brought by the Secretary of Agriculture to revoke the license of a rice mill under the Act in effect prior to the present Act. The Secretary of Agriculture sought to revoke the license of this mill for failure to sell clean rice and rice products processed from rough rice at a price approximately 89 cents higher than the price paid for the rough rice. The affidavit showed that, although the government was able to prove the cost of the rough rice and to trace the particular rough rice into various "mixes" of clean rice and the price procured for these "mixes" of clean rice, it was never able to prove that the price procured for the clean rice processed from the particular lot of rough rice, was not 89 cents more than the price paid for the rough rice, because of the fact that clean rice is customarily sold in "mixes" of various lots of rice and there was no way to allocate the price procured for the mixed rice sold to the various lots of rough rice which went into the mix.

In the meantime, petitioner alleges that for the foregoing reasons and those set forth in its said

bill of complaint in said cause, and because the judge of said District Court in his said order dismissed said bill of complaint and refused to grant petitioner the injunction prayed for pending the appeal in this case, and because the Circuit Court of Appeals has denied petitioner's application for an injunction pending the hearing of its appeal, and because it will be several months before said Circuit Court of Appeals will hear its appeal and because the Circuit Court of Appeals in its opinion and order denying petitioner its said injunction has virtually decided and disposed of petitioner's appeal for all practical purposes, the respondent herein will, to the irreparable damage and loss of the petitioner herein, proceed to collect the said taxes for September, 1935, which are now due and unpaid, from petitioner, and said taxes for subsequent months, unless restrained by a preliminary injunction granted by this Court. The petitioner alleges that not only has it no complete remedy at law, but in fact no remedy at law at all, for the reasons hereinabove set forth and set forth more in detail in said bill of complaint, that it is faced with the alternative of paying the tax with the certainty that no remedy at law exists for its recovery in case it be held that it was unconstitutionally assessed, or of refusing to pay and running the risk of becoming liable for the heavy civil and criminal penalties provided in the Act, and that the said judge of said District Court should not have dismissed said bill of complaint, but should have overruled the same, and upon the hearing should have granted the prelimi-

nary injunction as prayed for in said bill of complaint, and the Circuit Court of Appeals should have granted petitioner the injunction pending its appeal.

Petitioner would further show that there is now pending in the Supreme Court of the United States a case involving the constitutionality of the said Agricultural Adjustment Act, being the same case in which the Circuit Court of Appeals for the First Circuit declared the Act to be unconstitutional, and that the Supreme Court has set said cause for oral argument on Monday, December 9, 1935; that a decision by the Supreme Court of the United States upon the validity of the said Act may be expected within a reasonable time thereafter; that the first benefit payment to farmers provided for in said Act has been made, and that under the standard form of contract between the Secretary of Agriculture and rice farmers no further payment is due until such time after December 1, 1935, as the secretary shall determine and declare what further amount of benefit payments shall be made and when they shall be made; that the taxes to be collected under said Act are for the purpose of making these benefit payments and that since the Secretary of Agriculture need make no further benefit payments until such time after December 1, 1935, as may be fixed by him, the delay of the Government in collecting these taxes which might be occasioned by the granting of the injunction prayed for herein will not occasion any injury to the Government nor will it unduly interfere with the achievement of the program set out in said Act if the Act be held constitutional. On the

other hand, as hereinabove alleged, great and irreparable damage will be done to petitioner in the event the law is held unconstitutional unless the injunction hereinafter prayed for is granted.

Petitioner further shows that it is informed that every other Circuit Court of Appeals to consider the question, namely, the Second, Sixth, Eighth, Ninth and Tenth, has granted injunctions pending appeal contrary to the action herein by the Circuit Court of Appeals for the Fifth Circuit.

Petitioner further shows that unless an injunction pending appeal be granted so as to preserve the *status quo,* the subject-matter of the suit will be lost and the jurisdiction of this Honorable Court defeated. Such injunction is necessary to preserve the jurisdiction of this Honorable Court, and in order that petitioner may enjoy the just fruits of a favorable decision herein.

The petitioner states that it is ready and willing to give any reasonable bond or other security that may be required by any order of this Court, including the deposit from month to month of the amount of tax due, in a depository to be designated by the Court, and therefore prays that this Court make an order granting petitioner a preliminary injunction enjoining and restraining the respondent, and his successors in office, from assessing or collecting or attempting to assess or collect from petitioner in any manner whatsoever, whether by lien or jeopardy or distraint proceeding, in court or otherwise, the said processing taxes for the month of September and subsequent months and any other processing taxes

under and pursuant to said Agricultural Adjustment Act upon rice processed by petitioner, and any interest or penalty on account of petitioner's failure to pay said processing taxes, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the petitioner, pending the hearing of petitioner's petition to this Honorable Court for a writ of certiorari in this cause, and if said petition is granted, pending the hearing of this cause by this Honorable Court, and upon such conditions and terms as to this Court may seem just.

HOMER L. BRUCE,

JOHN P. BULLINGTON,
Attorneys for Petitioner.
Houston, Texas.

BAKER, BOTTS, ANDREWS & WHARTON,
Of Counsel.
Houston, Texas.

STATE OF TEXAS,
COUNTY OF HARRIS.

Before me, the undersigned authority, on this day personally appeared John P. Bullington, known to me and who being by me duly sworn, deposed and said on his oath as follows: That he is one of counsel for petitioner in the above cause, and has read the foregoing motion; that he is personally familiar with the matters and things therein alleged, and that the same are true except as to such matters as are alleged on information and belief, and as to them he believes them to be true. He further states that he is a member of the bar of this Honorable Court and has made a careful examination of applicable decisions of this Honorable Court and is of the opinion that the relief herein prayed for should be granted under such decisions.

Sworn to and subscribed before me this the 8th day of November, A. D. 1935.

[SEAL]

RAYMOND NEILSON,
Notary Public in and for Harris County, Texas.

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1935

No. [illegible]

LEVY RICE MILLING CO., INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

MOTION FOR INJUNCTION TO PRESERVE STATUS QUO

M. B. REDMANN,
Attorney for Petitioner.
New Orleans, La.

MERRICK, SCHWARZ, GUSTE, BARNET & REDMANN,
New Orleans, La.

No.....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

LEVY RICE MILLING CO., INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

MOTION FOR INJUNCTION TO PRESERVE STATUS QUO

TO THE HONORABLE BENJAMIN N. CARDOZO, *Associate Justice of the Supreme Court of the United States:*

Comes now Levy Rive Milling Co., Inc., by its counsel, M. B. Redmann, and respectfully states that petitioner on October 28, 1935, brought a bill in equity in the United States District Court for the Eastern District of Louisiana, New Orleans Division, entitled Levy Rice Milling Co., Inc., Plaintiff, v. Rufus W. Fontenot, Individually and as

Acting United States Collector of Internal Revenue for the District of Louisiana, Defendant, and numbered 326 in Equity in the New Orleans Division of said court. In its bill of complaint in said cause petitioner prayed for a temporary restraining order to be issued immediately, and for a preliminary injunction after notice to the respondent, and for a permanent injunction on the final hearing of said cause, enjoining the respondent from assessing or collecting or attempting to assess or collect from the petitioner in any manner whatsoever, whether by lien or jeopardy or distraint proceedings, in court or otherwise, any processing taxes levied under and pursuant to the Act of the Congress of the United States known as the Agricultural Adjustment Act, and amendments thereto, or purported to be levied by said Act, upon the petitioner for the processing of rice during the month of September, 1935, and for subsequent months, and any interest or penalty on account of petitioner's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of petitioner. Said application for preliminary injunction was set down for hearing before the judge of said District Court at New Orleans on Monday, October 28, 1935. Notice thereof was duly waived by respondent. Prior to said hearing respondent filed his motion to dismiss said bill, copies of which motion and also of petitioner's bill of complaint are contained in the record in this cause now brought to this Court on petition for certiorari.

After a hearing on petitioner's motion for preliminary injunction and on respondent's motion to dismiss, the Honorable John McDuffie, acting judge of said District Court, on October 28, 1935, refused petitioner's motion for preliminary injunction, granted the motion of respondent to dismiss the said bill of complaint, and dismissed the said bill of complaint, to which petitioner herein duly excepted. Thereafter on the 29th day of October, 1935, the petitioner herein in open court and in the presence of counsel for respondent filed its petition for an appeal, which was duly allowed by the said judge of the United States District Court who tried said cause, and filed at the same time its assignments of error, and also a cost bond was duly filed and approved by the said judge of said District Court. At the time petitioner presented its said petition for appeal, it also petitioned said judge of the District Court to grant it an injunction enjoining the respondent in the manner set out in its request for a preliminary injunction in its bill of complaint, pending the appeal of petitioner to the Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, but the said judge of said District Court refused petitioner's said petition and refused to grant petitioner said injunction pending said appeal.

Petitioner perfected its appeal to the Circuit Court of Appeals for the Fifth Circuit, making said cause returnable at New Orleans, Louisiana, as provided by law, and duly caused to be prepared a transcript of the record in said cause and filed the

same, in accordance with law and within the time allowed by law, in the office of the clerk of said Circuit Court of Appeals at New Orleans, Louisiana, and said cause was duly docketed in that Court as "Levy Rice Milling Co., Inc., Appellant, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, No. 7949."

On November 5, 1935, after notice of respondent, petitioner filed in said Circuit Court of Appeals its motion for a preliminary injunction pending the hearing of its appeal enjoining respondent from assessing or collecting from petitioner said taxes. The Circuit Court of Appeals on November 5, 1935, denied petitioner's said motion, stating in its opinion that

> "the taxpayer has a remedy at law to recover back any taxes illegally exacted, and, further that the provisions of the Act as amended deprive the Court of jurisdiction to grant injunctive relief."

Both in the District Court and in the Circuit Court of Appeals petitioner offered to give such security as the court might require in the event the court should ultimately decide the cause against petitioner.

Petitioner has filed in the Supreme Court of the United States its petition for a writ of certiorari in this cause and the record therein.

In said bill of complaint petitioner alleged that the amount of processing taxes on account of the

rice processed by the petitioner during the month of September, 1935, was $17,721.23, and that under said Agricultural Adjustment Act petitioner was required to pay said amount to respondent on or before October 30, 1935, and that respondent was charged with the duty of collecting said tax, and if said tax were not paid on or before October 30, 1935, respondent would assess said tax against the petitioner and serve upon petitioner notice and demand for the payment thereof and would allow petitioner ten days from receipt of such notice within which to pay the same; that in the event said tax should not be paid within said time, respondent would assess against petitioner a penalty equal to 5 per cent of the amount of the tax and interest on the tax at the rate of 1 per cent per month from the due date of the tax until paid; that if the petitioner failed to pay the tax within said ten days, respondent would proceed to collect the tax, penalty and interest by filing a notice of lien on all of petitioner's property and by distraining upon and selling such of petitioner's property as might be necessary to realize the amount of said tax, penalties and interest; and that additional processing taxes for months subsequent to September, 1935, will accrue and be assessed against and collected from the petitioner in the same manner as the tax for the month of September.

Petitioner alleged that the said processing tax was illegal and unconstitutional, and violated various provisions of the Constitution of the United States in many particulars, more fully set forth in peti-

tioner's bill of complaint. The petitioner also alleged that under an amendment to said Agricultural Adjustment Act approved on August 24, 1935, a Section 21(d) was added to said Act, which section provides in substances that petitioner should be allowed no recovery of any of said taxes paid, if the same should be illegal or unconstitutional, unless petitioner established to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner should so find, that neither petitioner nor any person directly or indirectly under petitioner's control or having control over petitioner, has, directly or indirectly, included such amount in the price of the rice with respect to which it was imposed or of any article processed from the rice with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing rice, and that the price paid by the petitioner or such person for said rice was not reduced by any part of such amount. Petitioner in said bill of complaint, alleged, as more fully set out therein, that under said Section 21 (d) it had no adequate remedy at law by which it could recover any part of said taxes if same were unconstitutional and illegal, and that it was impossible, owing to the peculiar conditions existing in the rice milling industry and in the purchase, milling and sale of rice, for petitioner to discharge the burden placed upon it by said Section 21 (d), all as more fully set out in petitioner's bill of complaint.

Petitioner further alleged that in said amendment of August 24, 1935, a new section known as Section 21 (a) was added to said Agricultural Adjustment Act, which in substance provided that no suit to enjoin the collection of said processing taxes should be maintained in any court. Petitioner further alleged that said section was not intended to apply, and did not apply, to the injunction prayed for by petitioner, inasmuch as petitioner had no adequate remedy at law. Petitioner further alleged that if said section should be interpreted as prohibiting the injunction prayed for by petitioner, then the said section, together with the other provisions of said Act, was invalid and in violation of the Fifth Amendment to the Constitution, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes would be collected from petitioner and petitioner would have no remedy by which it could recover taxes and would have no remedy to prevent the collection of said unlawful taxes and would be forever deprived of the right to test the constitutionality of said taxes.

Petitioner further alleged that said Section 21 (d) denied the petitioner a complete and adequate remedy at law for the various other reasons set forth in said bill of complaint.

At the hearing before the district judge petitioner introduced in evidence the affidavit of W. M. Reid, executive secretary of The Rice Millers' Association, a man of twenty-six years' experience in the rice business, in which affidavit he set out fully and

in detail the methods of conducting the rice business and the manner in which the rough rice market and the clean rice market is made, showing that it would be utterly impossible for any rice miller to accurately determine whether he had made a profit or a loss on any given transaction, much less prove whether he had passed the tax, or any part thereof, on. Petitioner also introduced in evidence the affidavit of Homer L. Bruce, a practicing attorney at the bar at Houston, Texas, setting out in detail the proceedings under a complaint brought by the Secretary of Agriculture to revoke the license of a rice mill under the Act in effect prior to the present Act. The Secretary of Agriculture sought to revoke the license of this mill for failure to sell clean rice and rice products processed from rough rice at a price approximately 89 cents higher than the price paid for the rough rice. The affidavit showed that, although the government was able to prove the cost of the rough rice and to trace the particular rough rice into various "mixes" of clean rice and the price procured for these "mixes" of clean rice, it was never able to prove that the price procured for the clean rice processed from the particular lot of rough rice, was not 89 cents more than the price paid for the rough rice, because of the fact that clean rice is customarily sold in "mixes" of various lots of rice and there was no way to allocate the price procured for the mixed rice sold to the various lots of rough rice which went into the mix.

In the meantime, petitioner alleges that for the foregoing reasons and those set forth in its said

bill of complaint in said cause, and because the judge of said District Court in his said order dismissed said bill of complaint and refused to grant petitioner the injunction prayed for pending the appeal in this case, and because the Circuit Court of Appeals has denied petitioner's application for an injunction pending the hearing of its appeal, and because it will be several months before said Circuit Court of Appeals will hear its appeal and because the Circuit Court of Appeals in its opinion and order denying petitioner its said injunction has virtually decided and disposed of petitioner's appeal for all practical purposes, the respondent herein will, to the irreparable damage and loss of the petitioner herein, proceed to collect the said taxes for September, 1935,—which are now due and unpaid, from petitioner, and said taxes for subsequent months, unless restrained by a preliminary injunction granted by this Court. The petitioner alleges that not only has it no complete remedy at law, but in fact no remedy at law at all, for the reasons hereinabove set forth and set forth more in detail in said bill of complaint, that it is faced with the alternative of paying the tax with the certainty that no remedy at law exists for its recovery in case it be held that it was unconstitutionally assessed, or of refusing to pay and running the risk of becoming liable for the heavy civil and criminal penalties provided in the Act, and that the said judge of said District Court should not have dismissed said bill of complaint, but should have overruled the same, and upon the hearing should have granted the prelimi-

nary injunction as prayed for in said bill of complaint, and the Circuit Court of Appeals should have granted petitioner the injunction pending its appeal.

Petitioner would further show that there is now pending in the Supreme Court of the United States a case involving the constitutionality of the said Agricultural Adjustment Act, being the same case in which the Circuit Court of Appeals for the First Circuit declared the Act to be unconstitutional, and that the Supreme Court has set said cause for oral argument on Monday, December 9, 1935; that a decision by the Supreme Court of the United States upon the validity of the said Act may be expected within a reasonable time thereafter; that the first benefit payment to farmers provided for in said Act has been made, and that under the standard form of contract between the Secretary of Agriculture and rice farmers no further payment is due until such time after December 1, 1935, as the secretary shall determine and declare what further amount of benefit payments shall be made and when they shall be made; that the taxes to be collected under said Act are for the purpose of making these benefit payments and that since the Secretary of Agriculture need make no further benefit payments until such time after December 1, 1935, as may be fixed by him, the delay of the Government in collecting these taxes which might be occasioned by the granting of the injunction prayed for herein will not occasion any injury to the Government nor will it unduly interfere with the achievement of the program set out in said Act if the Act be held constitutional. On the

other hand, as hereinabove alleged, great and irreparable damage will be done to petitioner in the event the law is held unconstitutional unless the injunction hereinafter prayed for is granted.

Petitioner further shows that it is informed that every other Circuit Court of Appeals to consider the question, namely, the Second, Sixth, Eighth, Ninth and Tenth, has granted injunctions pending appeal contrary to the action herein by the Circuit Court of Appeals for the Fifth Circuit.

Petitioner further shows that unless an injunction pending appeal be granted so as to preserve the *status quo*, the subject-matter of the suit will be lost and the jurisdiction of this Honorable Court defeated. Such injunction is necessary to preserve the jurisdiction of this Honorable Court, and in order that petitioner may enjoy the just fruits of a favorable decision herein.

The petitioner states that it is ready and willing to give any reasonable bond or other security that may be required by any order of this Court, including the deposit from month to month of the amount of tax due, in a depository to be designated by the Court, and therefore prays that this Court make an order granting petitioner a preliminary injunction enjoining and restraining the respondent, and his successors in office, from assessing or collecting or attempting to assess or collect from petitioner in any manner whatsoever, whether by lien or jeopardy or distraint proceeding, in court or otherwise, the said processing taxes for the month of September and subsequent months and any other processing taxes

under and pursuant to said Agricultural Adjustment Act upon rice processed by petitioner, and any interest or penalty on account of petitioner's failure to pay said processing taxes, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the petitioner, pending the hearing of petitioner's petition to this Honorable Court for a writ of certiorari in this cause, and if said petition is granted, pending the hearing of this cause by this Honorable Court, and upon such conditions and terms as to this Court may seem just.

Ralph J. Schwarz,
M. B. REDMANN,
Attorney for Petitioner.
New Orleans, La.

MERRICK, SCHWARZ, GUSTE, BARNET & REDMANN,
New Orleans, La.

STATE OF LOUISIANA,
PARISH OF ORLEANS.

Before me, the undersigned authority, on this day personally appeared M. B. Redmann, known to me and who being by me duly sworn, deposed and said on his oath as follows: That he is one of counsel for petitioner in the above cause, and has read the foregoing motion; that he is personally familiar with the matters and things therein alleged, and that the same are true except as to such matters as are alleged on information and belief, and as to them he believes them to be true.

Sworn to and subscribed before me this the 14th day of November, A. D. 1935.

[SEAL] (Sgd) William J. Guste

Notary Public in and for Orleans Parish, La.

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1935

No. [illegible]

NOBLE-TROTTER RICE MILLING CO., INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

MOTION FOR INJUNCTION TO PRESERVE STATUS QUO

C. A. McCOY,
Attorney for Petitioner.

McCOY, KING & JONES,
Lake Charles, La.,
Of Counsel.

No.....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

NOBLE-TROTTER RICE MILLING CO., INC.,
PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

MOTION FOR INJUNCTION TO PRESERVE STATUS QUO

TO THE HONORABLE BENJAMIN N. CARDOZO, *Associate Justice of the Supreme Court of the United States:*

Comes now Noble-Trotter Rice Milling Co., Inc., by its counsel, C. A. McCoy, and respectfully states that petitioner on October 28, 1935, brought a bill in equity in the United Sates District Court for the Eastern District of Louisiana, New Orleans Division, entitled Noble-Trotter Rice Milling Co., Inc., Plaintiff, v. Rufus W. Fontenot, Individually and as

Acting United States Collector of Internal Revenue for the District of Louisiana, Defendant, and numbered 328 in Equity in the New Orleans Division of said court. In its bill of complaint in said cause petitioner prayed for a temporary restraining order to be issued immediately, and for a preliminary injunction after notice to the respondent, and for a permanent injunction on the final hearing of said cause, enjoining the respondent from assessing or collecting or attempting to assess or collect from the petitioner in any manner whatsoever, whether by lien or jeopardy or distraint proceedings, in court or otherwise, any processing taxes levied under and pursuant to the Act of the Congress of the United States known as the Agricultural Adjustment Act, and amendments thereto, or purported to be levied by said Act, upon the petitioner for the processing of rice during the month of September, 1935, and for subsequent months, and any interest or penalty on account of petitioner's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of petitioner. Said application for preliminary injunction was set down for hearing before the judge of said District Court at New Orleans on Monday, October 28, 1935. Notice thereof was duly waived by respondent. Prior to said hearing respondent filed his motion to dismiss said bill, copies of which motion and also of petitioner's bill of complaint are contained in the record in this cause now brought to this Court on petition for certiorari.

After a hearing on petitioner's motion for preliminary injunction and on respondent's motion to dismiss, the Honorable John McDuffie, acting judge of said District Court, on October 28, 1935, refused petitioner's motion for preliminary injunction, granted the motion of respondent to dismiss the said bill of complaint, and dismissed the said bill of complaint, to which petitioner herein duly excepted. Thereafter on the 29th day of October, 1935, the petitioner herein in open court and in the presence of counsel for respondent filed its petition for an appeal, which was duly allowed by the said judge of the United States District Court who tried said cause, and filed at the same time its assignments of error, and also a cost bond was duly filed and approved by the said judge of said District Court. At the time petitioner presented its said petition for appeal, it also petitioned said judge of the District Court to grant it an injunction enjoining the respondent in the manner set out in its request for a preliminary injunction in its bill of complaint, pending the appeal of petitioner to the Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, but the said judge of said District Court refused petitioner's said petition and refused to grant petitioner said injunction pending said appeal.

Petitioner perfected its appeal to the Circuit Court of Appeals for the Fifth Circuit, making said cause returnable at New Orleans, Louisiana, as provided by law, and duly caused to be prepared a transcript of the record in said cause and filed the

same, in accordance with law and within the time allowed by law, in the office of the clerk of said Circuit Court of Appeals at New Orleans, Louisiana, and said cause was duly docketed in that Court as "Noble-Trotter Rice Milling Co., Inc., Appellant, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, No. 7951."

On November 4, 1935, after notice to respondent, petitioner filed in said Circuit Court of Appeals its motion for a preliminary injunction pending the hearing of its appeal enjoining respondent from assessing or collecting from petitioner said taxes. The Circuit Court of Appeals on November 5, 1935, denied petitioner's said motion, stating in its opinion that

> "the taxpayer has a remedy at law to recover back any taxes illegally exacted, and, further that the provisions of the Act as amended deprive the Court of jurisdiction to grant injunctive relief."

Both in the District Court and in the Circuit Court of Appeals petitioner offered to give such security as the court might require in the event the court should ultimately decide the cause against petitioner.

Petitioner has filed in the Supreme Court of the United States its petition for a writ of certiorari in this cause and the record therein.

In said bill of complaint petitioner alleged that the amount of processing taxes on account of the

rice processed by the petitioner during the month of September, 1935, was $17,331.90, and that under said Agricultural Adjustment Act petitioner was required to pay said amount to respondent on or before October 30, 1935, and that respondent was charged with the duty of collecting said tax, and if said tax were not paid on or before October 30, 1935, respondent would assess said tax against the petitioner and serve upon petitioner notice and demand for the payment thereof and would allow petitioner ten days from receipt of such notice within which to pay the same; that in the event said tax should not be paid within said time, respondent would assess against petitioner a penalty equal to 5 per cent of the amount of the tax and interest on the tax at the rate of 1 per cent per month from the due date of the tax until paid; that if the petitioner failed to pay the tax within said ten days, respondent would proceed to collect the tax, penalty and interest by filing a notice of lien on all of petitioner's property and by distraining upon and selling such of petitioner's property as might be necessary to realize the amount of said tax, penalties and interest; and that additional processing taxes for months subsequent to September, 1935, will accrue and be assessed against and collected from the petitioner in the same manner as the tax for the month of September.

Petitioner alleged that the said processing tax was illegal and unconstitutional, and violated various provisions of the Constitution of the United States in many particulars, more fully set forth in peti-

tioner's bill of complaint. The petitioner also alleged that under an amendment to said Agricultural Adjustment Act approved on August 24, 1935, a Section 21(d) was added to said Act, which section provides in substances that petitioner should be allowed no recovery of any of said taxes paid, if the same should be illegal or unconstitutional, unless petitioner established to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner should so find, that neither petitioner nor any person directly or indirectly under petitioner's control or having control over petitioner, has, directly or indirectly, included such amount in the price of the rice with respect to which it was imposed or of any article processed from the rice with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing rice, and that the price paid by the petitioner or such person for said rice was not reduced by any part of such amount. Petitioner in said bill of complaint, alleged, as more fully set out therein, that under said Section 21 (d) it had no adequate remedy at law by which it could recover any part of said taxes if same were unconstitutional and illegal, and that it was impossible, owing to the peculiar conditions existing in the rice milling industry and in the purchase, milling and sale of rice, for petitioner to discharge the burden placed upon it by said Section 21 (d), all as more fully set out in petitioner's bill of complaint.

Petitioner further alleged that in said amendment of August 24, 1935, a new section known as Section 21 (a) was added to said Agricultural Adjustment Act, which in substance provided that no suit to enjoin the collection of said processing taxes should be maintained in any court. Petitioner further alleged that said section was not intended to apply, and did not apply, to the injunction prayed for by petitioner, inasmuch as petitioner had no adequate remedy at law. Petitioner further alleged that if said section should be interpreted as prohibiting the injunction prayed for by petitioner, then the said section, together with the other provisions of said Act, was invalid and in violation of the Fifth Amendment to the Constitution, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes would be collected from petitioner and petitioner would have no remedy by which it could recover taxes and would have no remedy to prevent the collection of said unlawful taxes and would be forever deprived of the right to test the constitutionality of said taxes.

Petitioner further alleged that said Section 21 (d) denied the petitioner a complete and adequate remedy at law for the various other reasons set forth in said bill of complaint.

At the hearing before the district judge petitioner introduced in evidence the affidavit of W. M. Reid, executive secretary of The Rice Millers' Association, a man of twenty-six years' experience in the rice business, in which affidavit he set out fully and

in detail the methods of conducting the rice business and the manner in which the rough rice market and the clean rice market is made, showing that it would be utterly impossible for any rice miller to accurately determine whether he had made a profit or a loss on any given transaction, much less prove whether he had passed the tax, or any part thereof, on. Petitioner also introduced in evidence the affidavit of Homer L. Bruce, a practicing attorney at the bar at Houston, Texas, setting out in detail the proceedings under a complaint brought by the Secretary of Agriculture to revoke the license of a rice mill under the Act in effect prior to the present Act. The Secretary of Agriculture sought to revoke the license of this mill for failure to sell clean rice and rice products processed from rough rice at a price approximately 89 cents higher than the price paid for the rough rice. The affidavit showed that, although the government was able to prove the cost of the rough rice and to trace the particular rough rice into various "mixes" of clean rice and the price procured for these "mixes" of clean rice, it was never able to prove that the price procured for the clean rice processed from the particular lot of rough rice, was not 89 cents more than the price paid for the rough rice, because of the fact that clean rice is customarily sold in "mixes" of various lots of rice and there was no way to allocate the price procured for the mixed rice sold to the various lots of rough rice which went into the mix.

In the meantime, petitioner alleges that for the foregoing reasons and those set forth in its said

bill of complaint in said cause, and because the judge of said District Court in his said order dismissed said bill of complaint and refused to grant petitioner the injunction prayed for pending the appeal in this case, and because the Circuit Court of Appeals has denied petitioner's application for an injunction pending the hearing of its appeal, and because it will be several months before said Circuit Court of Appeals will hear its appeal and because the Circuit Court of Appeals in its opinion and order denying petitioner its said injunction has virtually decided and disposed of petitioner's appeal for all practical purposes, the respondent herein will, to the irreparable damage and loss of the petitioner herein, proceed to collect the said taxes for September, 1935, which are now due and unpaid, from petitioner, and said taxes for subsequent months, unless restrained by a preliminary injunction granted by this Court. The petitioner alleges that not only has it no complete remedy at law, but in fact no remedy at law at all, for the reasons hereinabove set forth and set forth more in detail in said bill of complaint, that it is faced with the alternative of paying the tax with the certainty that no remedy at law exists for its recovery in case it be held that it was unconstitutionally assessed, or of refusing to pay and running the risk of becoming liable for the heavy civil and criminal penalties provided in the Act, and that the said judge of said District Court should not have dismissed said bill of complaint, but should have overruled the same, and upon the hearing should have granted the prelimi-

nary injunction as prayed for in said bill of complaint, and the Circuit Court of Appeals should have granted petitioner the injunction pending its appeal.

Petitioner would further show that there is now pending in the Supreme Court of the United States a case involving the constitutionality of the said Agricultural Adjustment Act, being the same case in which the Circuit Court of Appeals for the First Circuit declared the Act to be unconstitutional, and that the Supreme Court has set said cause for oral argument on Monday, December 9, 1935; that a decision by the Supreme Court of the United States upon the validity of the said Act may be expected within a reasonable time thereafter; that the first benefit payment to farmers provided for in said Act has been made, and that under the standard form of contract between the Secretary of Agriculture and rice farmers no further payment is due until such time after December 1, 1935, as the secretary shall determine and declare what further amount of benefit payments shall be made and when they shall be made; that the taxes to be collected under said Act are for the purpose of making these benefit payments and that since the Secretary of Agriculture need make no further benefit payments until such time after December 1, 1935, as may be fixed by him, the delay of the Government in collecting these taxes which might be occasioned by the granting of the injunction prayed for herein will not occasion any injury to the Government nor will it unduly interfere with the achievement of the program set out in said Act if the Act be held constitutional. On the

other hand, as hereinabove alleged, great and irreparable damage will be done to petitioner in the event the law is held unconstitutional unless the injunction hereinafter prayed for is granted.

Petitioner further shows that it is informed that every other Circuit Court of Appeals to consider the question, namely, the Second, Sixth, Eighth, Ninth and Tenth, has granted injunctions pending appeal contrary to the action herein by the Circuit Court of Appeals for the Fifth Circuit.

Petitioner further shows that unless an injunction pending appeal be granted so as to preserve the *status quo,* the subject-matter of the suit will be lost and the jurisdiction of this Honorable Court defeated. Such injunction is necessary to preserve the jurisdiction of this Honorable Court, and in order that petitioner may enjoy the just fruits of a favorable decision herein.

The petitioner states that it is ready and willing to give any reasonable bond or other security that may be required by any order of this Court, including the deposit from month to month of the amount of tax due, in a depository to be designated by the Court, and therefore prays that this Court make an order granting petitioner a preliminary injunction enjoining and restraining the respondent, and his successors in office, from assessing or collecting or attempting to assess or collect from petitioner in any manner whatsoever, whether by lien or jeopardy or distraint proceeding, in court or otherwise, the said processing taxes for the month of September and subsequent months and any other processing taxes

under and pursuant to said Agricultural Adjustment Act upon rice processed by petitioner, and any interest or penalty on account of petitioner's failure to pay said processing taxes, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the petitioner, pending the hearing of petitioner's petition to this Honorable Court for a writ of certiorari in this cause, and if said petition is granted, pending the hearing of this cause by this Honorable Court, and upon such conditions and terms as to this Court may seem just.

C. A. McCoy,
Attorney for Petitioner.

McCoy, King & Jones,
Lake Charles, La.,
Of Counsel.

STATE OF LOUISIANA,
PARISH OF CALCASIEU.

Before me, the undersigned authority, on this day personally appeared C. A. McCoy, known to me and who being by me duly sworn, deposed and said on his oath as follows: That he is one of counsel for petitioner in the above cause, and has read the foregoing motion; that he is personally familiar with the matters and things therein alleged, and that the same are true except as to such matters as are alleged on information and belief, and as to them he believes them to be true. C. A. McCoy

Sworn to and subscribed before me this the 12th day of November, A. D. 1935.

[SEAL] Marie Sundelburg

Notary Public in and for Calcasieu Parish, La.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

Rickert Rice Mills, Inc., Petitioner, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.	No. 577
A. B. Dore, Petitioner, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.	No. 578
United Rice Milling Products Co., Inc., Petitioner, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.	No. 579
Baton Rouge Rice Mill, Inc., Petitioner, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.	No. 580
T. Simon, Petitioner, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.	No. 581

SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR INJUNCTION TO PRESERVE STATUS QUO.

HOMER L. BRUCE,
JOHN P. BULLINGTON,
Attorneys for Petitioners,
Houston, Texas.

BAKER, BOTTS, ANDREWS & WHARTON,
Of Counsel
Houston, Texas.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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T. Simon, Petitioner, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.	No. 581

SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR INJUNCTION TO PRESERVE STATUS QUO.

May it Please the Court:

Petitioners have been granted leave by the Court to file a short supplemental statement in support of their motions for injunction to preserve the *status quo* in the above cases.

While the facts and authorities are set out in the petition for writ of certiorari and brief in support thereof in each of the cases, there are certain matters bearing upon whether the injunctions prayed for should issue which do not appear in the petitions or briefs.

These cases were originally filed in United States District Court for the Eastern District of Louisiana, of which District Judge Borah is the regular judge. When these cases were filed and submitted, Judge Borah was ill and Judge John McDuffie of Mobile, Alabama, was assigned to sit in Judge Borah's place. Although affidavits were introduced by petitioners and respondent, they were not considered by the Court since counsel for the Government at the hearing interrupted the argument of petitioners and stated to the Court that, for the purpose of the hearing, the Government conceded that petitioners could not make the proof required by Section 21 (d) of the Agricultural Adjustment Act for the refund of any taxes illegally assessed. Counsel for the Government argued the sole proposition that the Court was without jurisdiction because of Section 21 (a) of the Act, as amended, and stated to Judge McDuffie that Judge Borah had previously dismissed similar suits for that reason. Whereupon, Judge McDuffie announced that he felt bound by the decision of the regular judge and would, therefore, enter the same order as had been entered by Judge Borah in similar cases. He likewise stated that for the same reason he would overrule petitioners' motion for injunction pending an appeal.

The motion for injunction pending an appeal filed in the Circuit Court of Appeals was presented to Circuit Judges Foster and Sibley and District Judge Strum in chambers late in the afternoon after the Court had heard its regular docket for the day. Counsel for petitioners was permitted to appear before the Court in chambers where the sole matter discussed was the question of *fact* whether petitioners could or could not make the proof required by Section 21 (d). This, despite the fact that the case was before the Circuit

Court on appeal from a *final judgment* of the District Court dismissing the bill pursuant to a motion by respondent which *admitted* that the proof required by Section 21 (d) could not be made.

Neither in the trial court nor in the Circuit Court of Appeals has there been any hearing or argument upon any of the constitutional questions raised by petitioner with reference to Section 21 (a) and Sections 115 to 131 of Title 26, U. S. C. For this reason, unless this Court grants the injunction prayed for to preserve the *status quo* and grants certiorari in these cases, the petitioners herein will be in the position of having urged important constitutional questions relating to their property rights which they have never had an opportunity to present to any court. The effect of a denial of the injunctive relief prayed for herein, and the writ of certiorari prayed for, will be to effectively deprive petitioners of any opportunity to have a hearing in any court upon these grave constitutional matters raised in their petition for certiorari because they will of necessity have to pay the taxes involved in the suits as they accrue each month prior to the time when their appeals will come on in regular order to be heard by the Circuit Court of Appeals.

Petitioners' taxes for the month of September are now past due and counsel for petitioners have been advised today that the respondent proposes to give notice and demand for the payment of such taxes not later than November 20th and such notice and demand will within 10 days thereafter authorize respondent to use all of the summary methods of collection provided in Sections 115-131 of Title 26, U. S. C.

When these circumstances are considered in connection with the other facts set up in the petition and brief for certiorari, petitioners submit that this is a case where the relief prayed for should be granted.

Petitioners will not burden the Court with citation of prior cases in which injunctions have been granted by this

Court to preserve the *status quo* in cases pending herein since the Court has just had them fully presented to it in another case involving the Guffey Coal Act.

Petitioners further show the Court that this case is entirely different from the Washburn-Crosby Case in which the Court denied certiorari on Monday last. In that case, petitioners had been granted an injunction pending appeal by the Circuit Court of Appeals for the Eighth Circuit and petitioners' right in that case could be fully protected by pursuing the usual course. Furthermore, there was not in that case, as in these cases, an order of the Circuit Court of Appeals, which, though interlocutory in form, as a matter of fact finally disposed of these cases against petitioners. Likewise these cases are entirely different from the Carter Coal Company Case which has just been disposed of by the Court. In that case, petitioners prayed for an injunction without the giving of any bond or other security and it affirmatively appeared that the trial court would have granted the injunction prayed for had security been given. Petitioners here offer to place the full amount of tax involved on deposit in any depository which may be designated by this Court, each month as the taxes accrue, or to give any other security which this Court may deem just and reasonable.

Wherefore, petitioners submit that the motions for injunctions to preserve the *status quo* should be granted by this Honorable Court.

HOMER L. BRUCE,
JOHN P. BULLINGTON,
Attorneys for Petitioners,
Houston, Texas.

BAKER, BOTTS, ANDREWS & WHARTON,
Of Counsel
Houston, Texas.

November 12, 1935.

FILE COPY

Nos. 577-581, 585-587.

Supreme Court of the United States

OCTOBER TERM, 1935.

RICKERT RICE MILLS, INC., PETITIONER,
v.
RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

A. B. DORE, PETITIONER,
v.
RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

UNITED RICE MILLING PRODUCTS CO., INC., PETITIONER,
v.
RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

BATON ROUGE RICE MILL, INC., PETITIONER,
v.
RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

T. SIMON, PETITIONER,
v.
RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

LEVY RICE MILLING CO., INC., PETITIONER,
v.
RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

FARMERS RICE MILLING CO., INC., PETITIONER,
v.
RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

NOBLE-TROTTER RICE MILLING CO., INC., PETITIONER,
v.
RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND MOTION FOR INJUNCTION TO PRESERVE STATUS QUO.

REPLY BRIEF FOR PETITIONERS.

HOMER L. BRUCE,
JOHN P. BULLINGTON,
Counsel for Petitioners.

BAKER, BOTTS, ANDREWS & WHARTON,
Of Counsel.

Houston, Texas.
November 21, 1935.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Supreme Court of the United States

OCTOBER TERM, 1935.

RICKERT RICE MILLS, INC., PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

A. B. DORE, PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

UNITED RICE MILLING PRODUCTS CO., INC., PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

BATON ROUGE RICE MILL, INC., PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

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LEVY RICE MILLING CO., INC., PETITIONER,

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FARMERS RICE MILLING CO., INC., PETITIONER,

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NOBLE-TROTTER RICE MILLING CO., INC., PETITIONER,

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RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND MOTION FOR INJUNCTION TO PRESERVE STATUS QUO.

May it please the Court:

Petitioners make the following reply to the brief of the Government in opposition to their petitions for writs of

certiorari and for motions for injunctions to preserve the *status quo*.

I.

Applicability of R. S. Sec. 3224.

Petitioners are well aware of the "system of corrective justice" for the collection of taxes. However, the whole basis of that system for summary collection and "litigation later" is the existence of the opportunity to litigate later. *Phillips* v. *Commissioner* (1931), 283 U. S. 589, 596. The cases cited by respondent have no application to the present situation where the opportunity to "litigate later" is taken away by an act of Congress.

II.

Petitioners' Remedy at Law is in No Sense Plain, Adequate or Complete.

Petitioners do not, as stated by the Government (Br. 10), contend that Sec. 21 (d) is unconstitutional. Indeed, they could make no such contention in this case since that statute is not before the Court except insofar as it bears upon the constitutionality of Sec. 21(a) of the Act and Secs. 115-131, U. S. C., as amended.

As has been pointed out in petitioners' briefs in support of their petitions for writs of certiorari the case of *U. S.* v. *Jefferson Electric Co.*, 291 U. S. 386, involved a wholly different situation and has no application here. Furthermore, the case of *Pacific States Box & Basket Co.* v. *White* (November 18, 1935) is entirely without application since petitioners have set out in great detail the method of conducting the rice milling business and have detailed the reasons why, in their particular business, it would be impossible to make the proof required by Sec. 21(d) (R. 16-21).

Nor is the case of *Burnet* v. *Houston*, 283 U. S. 223, at all in point for that case merely involved the inability of a particular taxpayer to make proof of the value of certain property in 1913, which property was then owned by

him and thereafter sold. There was no question there involved of injunctive relief or of the adequacy of a legal remedy afforded by statute. Furthermore, that case involved the mere inability of a single taxpayer to make proof of a particular fact necessary in order to establish his case for refund. In the cases now before the Court petitioners assert that on the face of the Act itself it is impossible for the burden of proof set up in Sec. 21 (d) to be met by *any* processor of *any* basic agricultural commodity. Petitioners further assert that, even if this were not true, the detailed facts alleged in their bill with regard to the peculiar conditions in the rice industry present a case of an entire class of taxpayers being deprived of a legal remedy as distinguished from a single individual being unable to make proof of a certain fact in a particular case.

On pages 12 and 13 Respondent refers to considerable extraneous matter which is to be found nowhere in the record and which, we submit, is not properly before the Court. Petitioners are not advised with respect to any of these alleged facts, but do affirmatively deny the apparent attempt to suggest the inference that some rice millers have made claims for refunds inconsistent with the position taken by petitioners here. According to respondent's brief so-called "conversion factors" (purely arbitrary, of course) for rice were not finally fixed by the Secretary of the Treasury until September 1935, the very month in which the taxes here involved became due. Since these taxes have not yet been paid, obviously there could have been filed no claims for refunds. In addition, the refunds there referred to are entirely different from the refunds which would be involved under Sec. 21(d) and are really no more than drawbacks. In any event, these petitioners are certainly not bound by what refund some other processor of a different commodity in a different business may have been willing to accept in a situation which assumed the validity of the tax. Petitioners can only reiterate what has been said in their original briefs, that on the face of

the Act itself an impossible burden of proof has ben set up. In this connection the Court is respectfully referred to the article "Taxation" in Vol. XIV of the *Encyclopedia of the Social Sciences*, p. 531. At page 535 there is found the most recent discussion of all the various *theories* with regard to the "passing on" of taxes and there it is stated that "* * * the amount of verified knowledge concerning the shifting and incidence of taxation is disappointingly slight * * *." (p. 537.)

In petitioners' original briefs the Government was invited to suggest just *how* the proof required by Sec. 21(d) could be made by these petitioners, or any other taxpayer similarly situated, but the invitation has not been accepted. Petitioners submit that, apart from any peculiar conditions existing in the rice industry, it is too much to ask them to make proof or disproof of an economic theory about which learned men have been differing for generations. If all the scholars who have been studying for these many years the question of "passing on" of taxes have been unable to devise any method of *factually* proving or disproving the theory, it is hardly to be expected that these petitioners will be able to devise a method overnight.

III.

The Alleged Prohibition of Sec. 21(a) of the Act.

As to this section of the brief of the Government it need only be said that the brief wholly fails to even discuss the cases and arguments presented in the original briefs of petitioners.

IV.

The Alleged Unjust Enrichment.

Here again the Government falls back upon the *Jefferson Electric Case, supra.* In that case, the Act permitted the recovery of the tax by whatever person actually paid it. If the taxpayer failed to prove that he had not collected the tax from the purchaser of the article involved he could

nevertheless get a refund of the tax by giving a bond conditioned that he would pay the money over to the purchaser who had actually paid. There is no such provision in the present Act and the Government makes the astounding proposition that the Government should take and keep *all of the tax* simply because of the possibility that someone else other than these petitioners might have, to some undisclosed extent, borne the ultimate economic burden of the tax. Petitioners are not here seeking to recover money in the hands of the Government as was the taxpayer in the *Jefferson Electric Case*, but they are seeking to prevent the Government from taking from them by forcible process monies which petitioners say the Government is not entitled to. In such a situation the doctrine of "unjust enrichment" would in any event have no application.

These matters aside, however, the complete answer to this contention of the Government is that it *assumes* that the taxes have been "passed on," a matter which petitioners confidently assert can neither be proved nor disproved.

V.

The Constitutionality of Secs. 115-131 U. S. C., as Amended.

Respondent's brief makes no answer to petitioners' contention that, even if Sec. 21(a) forbids the granting of an injunction in these cases, and so forbidding, is constitutional, then Secs. 115-131 U. S. C., as amended, as applied to these petitioners, are unconstitutional. We submit that even if the Government's position with reference to R. S. Sec. 3224 and Sec. 21(a) of the Act were correct the petitioners would be entitled to an injunction against the use of the *summary proceedings* provided in the sections of the Code refered to. Such an injunction would of course leave the Government free to institute suits against petitioners for collection of the taxes, in which suits they could raise the constitutionality of the Act.

VI.

Conclusion.

The District Court in this case has entered a final judgment; the Circuit Court of Appeals has entered an order which, in effect, finally disposes of the case on the merits since it has specifically held that it is *without jurisdiction to grant the sole relief sought* by petitioners. In this state of the record, the proposition of the Government that certiorari should be denied until after the Circuit Court of Appeals has reaffirmed its holding several months hence, is simply a suggestion that petitioners should never be allowed to present to any court the grave constitutional questions involved in these suits. The great importance of having the questions here involved determined by this Honorable Court has been pointed out in an editorial comment in the November 1935 issue of the Harvard Law Review at p. 109. This is not a case where petitioners are attempting to "skip" the Circuit Court of Appeals for the simple purpose of procuring an early decision of the questions involved. On the contrary, it is a case where petitioners seek only to protect their constitutional rights, and to do it in the only manner which is open to them.

If the position here taken by the Government be sustained it means that in the future the Government will have no difficulty in assessing, collecting and retaining unconstitutional taxes. All that would be necessary would be to withdraw the Government's consent to be sued, forbid injunctive relief in the courts, and proceed to the collection of the taxes by the summary procedure afforded under the Code.

These petitions present squarely to the Court the great public question of the taxpayer's right to injunctive relief in cases where that is the only method open to him to protect his constitutional rights. This question is not to be solved by merely citing R. S. Sec. 3224 or Sec. 21(a) of the Act. The rights, not merely of these petitioners are in-

volved, but the rights of citizens who are plaintiffs in similar suits pending in inferior Federal courts throughout the country. On the right of these citizens to injunctive relief depends not only whether these particular taxes shall be collected from them, but in many instances, their very right to continue in existence as going concerns. Denial of the relief sought by petitioners here can have no other result than the denial of the rights of any citizen to present and orally argue in any appellate court the great public question here involved. It is noteworthy that the Government has not denied, as it can not deny, that grave injury will result not only to these petitioners, but to all others similarly situated, if the relief prayed for here is denied. Likewise, the Government does not deny, as it can not deny, that no injury can result to the Government if the relief prayed for is granted.

It is respectfully submitted that the petitions for certiorari and the motions for injunctions to preserve the *status quo* should be in all respects granted.

Respectfully submitted,

HOMER L. BRUCE,
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Counsel for Petitioners.

BAKER, BOTTS, ANDREWS & WHARTON,
Of Counsel.

Houston, Texas.
November 21, 1935.

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Nos. 577-581, 585-587

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In the Supreme Court of the United States

OCTOBER TERM, 1935

RICKERT RICE MILLS, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT

A. B. DORE, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT

UNITED RICE MILLING PRODUCTS CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT

BATON ROUGE RICE MILL, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT

T. SIMON, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT

LEVY RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT

FARMERS RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT

NOBLE-THOTTER RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND MOTION FOR INJUNCTION TO PRESERVE STATUS QUO

MOTION FOR TIME TO FILE RESPONSE TO PETITIONS FOR CERTIORARI AND ANSWERS TO MOTIONS FOR TEMPORARY INJUNCTIONS

In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 577

RICKERT RICE MILLS, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana, Respondent

---

No. 578

A. B. DORE, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana, Respondent

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No. 579

UNITED RICE MILLING PRODUCTS CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana, Respondent

30471—35

No. 580

BATON ROUGE RICE MILL, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana, Respondent

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No. 581

T. SIMON, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana, Respondent

---

No. 585

LEVY RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana, Respondent

---

No. 586

FARMERS RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTing United States Collector of Internal Revenue for the District of Louisiana, respondent

No. 587

NOBLE-TROTTER RICE MILLING CO., INC., petitioner

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana, respondent

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND MOTION FOR INJUNCTION TO PRESERVE STATUS QUO

MOTION FOR TIME TO FILE RESPONSE TO PETITIONS FOR CERTIORARI AND ANSWERS TO MOTIONS FOR TEMPORARY INJUNCTIONS

The motions for temporary injunctions in five of these cases were delivered to the Solicitor General at 4:00 P. M. on Tuesday, November 12, 1935, and such motions in three of the cases were delivered on Wednesday, November 13, 1935. The petitions for certiorari in five of the cases were delivered on Wednesday, November 13, 1935, and three of the petitions were delivered on Thursday, November 14, 1935, to the Solicitor General. The records in five of the cases were received about 4:00 P. M. on Thursday, November 14, 1935, and the records in the remaining three cases had not been received at midnight last night.

The bills of complaint in all of these cases were filed in the United States District Court for the Eastern District of Louisiana on October 28, 1935. Motions

for preliminary injunctions and motions to dismiss the bills of complaint were heard by that Court on October 28, 1935. On the same day, such injunctions were denied and motions to dismiss the bills were granted by the District Court. On October 29, 1935, petitions for appeal were filed and allowed by the District Court and the appeals were docketed in the Circuit Court of Appeals for the Fifth Circuit on October 31, 1935. On November 5, 1935, the Circuit Court of Appeals heard and denied motions for injunctions pending the appeal.

On November 11, 1935, motions in five of these cases were presented to Mr. Justice Cardozo, which we understand have been referred by him to the full bench. Meanwhile, the eight petitions for certiorari were filed with the Court and notice of the filing has been received by the Solicitor General.

The question as to whether or not the motions should be granted depends upon whether or not they are ~~an~~ aid of the exercise of the court's jurisdiction as to the petitions for certiorari. The motions are based on Section 262 of the Judicial Code, which authorizes writs in aid of jurisdiction. *Ex parte United States*, 287 U. S. 241, at 245–246.

The petitions for certiorari involve the validity of Section 3224 of the Revised Statutes and Section 21 (a) of the Agricultural Adjustment Act, as amended August 24, 1935. These sections purport to bar relief by injunction against the collection of taxes, the latter section referring specifically to processing taxes. The provisions are attacked in the petition as unconstitu-

tional because arbitrary and unreasonable and thus violative of the Fifth Amendment to the Constitution and also violative of Section 2 of Article 3 of the Constitution.

It is the Government's position that Section 3224 of the Revised Statutes and Section 21 (a) of the Agricultural Adjustment Act, as amended, require the taxpayer to pay the tax and bring an action in the District Court to recover a refund of any tax erroneously or illegally assessed and collected; that the taxpayer has an adequate remedy at law under Section 21 (d) of the Agricultural Adjustment Act, as amended (*United States* v. *Jefferson Electric Co.*, 291 U. S. 386); and that the orders of the Circuit Court of Appeals, denying the temporary injunctions, and the final orders and decrees of the District Court, denying the injunctions and dismissing the bills, were proper.

The Government desires an opportunity to file answers to the motions for temporary injunctions and this can be done effectively only when accompanied by responses to the petitions for certiorari.

It appears that efforts to collect the tax will not be made during the period of time for which an extension is applied for by this motion, since petitioners in cases 577 to 581, inclusive, state in their supplemental brief in support of the motion for an injunction as follows (p. 3):

> Petitioners' taxes for the month of September are now past due and counsel for petitioners have been advised today that the

respondent proposes to give notice and demand for the payment of such taxes not later than November 20th and such notice and demand will within 10 days thereafter authorize respondent to use all of the summary methods of collection provided in Sections 115–131 of Title 26, U. S. C.

WHEREFORE, on behalf of the respondent, the Solicitor General moves for time until Friday, November 22, 1935, at 12:00 noon, to file answers to the motions for temporary injunctions and responses to the petitions for certiorari.

STANLEY REED,
Solicitor General.

NOVEMBER 15, 1935.

U. S. GOVERNMENT PRINTING OFFICE: 1935

FILE COPY

Nos. 577-581, 585-587

NOV 21 19

In the Supreme Court of the United States

OCTOBER TERM, 1935

BECKERT RICE MILLS, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT

A. B. DORR, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT

UNITED RICE MILLING PRODUCTS CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT

BATON ROUGE RICE MILL, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT

T. SIMON, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

LEVY RICE MILLING CO., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT

FARMERS RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT

NOBLE-TROTTER RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND MOTION FOR INJUNCTION TO PRESERVE STATUS QUO

BRIEF IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 577

RICKERT RICE MILLS, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana, respondent

---

No. 578

A. B. DORE, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana, respondent

---

No. 579

UNITED RICE MILLING PRODUCTS CO., INC., petitioner

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana, respondent

No. 580

BATON ROUGE RICE MILL, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana, respondent

---

No. 581

T. SIMON, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana, respondent

---

No. 585

LEVY RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana, respondent

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No. 586

FARMERS RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana, respondent

No. 587

NOBLE-TROTTER RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana, respondent

---

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND MOTION FOR INJUNCTION TO PRESERVE STATUS QUO

BRIEF IN OPPOSITION

OPINIONS BELOW

The United States District Court for the Eastern District of Louisiana, New Orleans Division, rendered no opinion and the order and *per curiam* opinion of the United States Circuit Court of Appeals for the Fifth Circuit, denying petitioners' motions for preliminary injunctions has not been officially reported.

JURISDICTION

These cases were consolidated for hearing in the District Court (R. 58).[1] The judgments and de-

[1] Reference is hereafter made to the record in case No. 579, *United Rice Mill Products Company, Inc.*, v. *Rufus W. Fontenot*, etc. The records, petitions for writ of certiorari, and motions for injunctions to preserve the status quo in Nos. 577–581 and Nos. 586–587, except as to dates and amounts, are practically identical in substance and in paging. The record in No. 585 is substantially identical except as to certain matters not material.

crees of the District Court were entered October 28, 1935. Petitions for writs of certiorari were filed November 11, 1935, and in connection therewith motions for injunctions to preserve the status quo were filed on the same day.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the constitutionality of processing taxes levied under the Agricultural Adjustment Act, as amended, may be tested in a suit for injunction.[2]

STATUTES INVOLVED

The pertinent provisions of the statutes involved are set forth in the Appendix, *infra*, pp. 19–26.

STATEMENT

Petitioners, all of whom are rice processors, filed bills of complaint in equity in the United States District Court for the Eastern District of Louisiana, New Orleans Division, against respondent, Rufus W. Fontenot, Individually and as acting United States Collector of Internal Revenue for the District of Louisiana, to restrain and enjoin respondent, temporarily and permanently, from assessing or collecting any processing taxes levied for

[2] Petitioners also ask an injunction to preserve the status quo. Should the Court deny the petitions for certiorari, there would be no occasion for granting the injunctions. There is no necessity, therefore, of discussing said motions.

the month of September 1935, and for subsequent months, under and pursuant to the Agricultural Adjustment Act, as amended August 24, 1935, together with any interest or penalty or imposition of liens.

Petitioners' prayers for preliminary injunctions (R. 24), and respondent's motions to dismiss the bills of complaint (R. 54), were heard by the District Court on October 28, 1935, on which date the District Court denied the applications for preliminary injunctions and granted the motions to dismiss the bills, and thereupon (R. 79), entered final decrees dismissing said bills of complaint.

On October 29, 1935, the District Court denied motions for injunctions pending the appeals (R. 79–80), and allowed petitioners' appeals to the Circuit Court of Appeals for the Fifth Circuit (R. 80). The praecipe for records on appeal were filed in the Circuit Court of Appeals for the Fifth Circuit on October 31, 1935 (R. 83). On November 5, 1935, petitioners' motions for injunctions pending appeal were denied by the Circuit Court of Appeals (R. 97). Judges Foster, Sibley, and Strum, on November 5, 1935, in denying said applications, entered the following *per curiam* opinion and order in each case (R. 97):

> BY THE COURT: On consideration of the application for an injunction to stay collection of taxes levied under the provisions of the Agricultural Adjustment Act, as amended by the Act of August 24, 1935, the Court is of the opinion that the taxpayer has a remedy

at law to recover back any taxes illegally exacted and, further, that the provisions of the Act as amended deprive the Court of jurisdiction to grant injunctive relief.

It is ordered that the application be DENIED.

On November 11, 1935, petitioners filed in this Court their petitions for writs of certiorari and at the same time filed herein their motions for injunctions to preserve the status quo.

ARGUMENT

In the District Court the motions for preliminary injunctions and motions to dismiss the bills were heard together. By final judgments and decrees entered October 29, 1935, the District Court dismissed the bills and denied the motions for preliminary injunctions. On November 5, 1935, motions for injunctions pending appeals were denied by the Circuit Court of Appeals on the ground not only that petitioners had a remedy at law to recover taxes alleged to have been illegally exacted but on the further ground that the provisions of the Agricultural Adjustment Act, as amended, deprived the court of jurisdiction to grant injunctive relief (R. 97). The appeals from the final judgments of the District Court are still awaiting hearing in the Circuit Court of Appeals (R. 98).

No valid reasons have been assigned by petitioners for review of the decisions of the District Court. Petitioners have referred to the action of certain of the Circuit Courts of Appeals in granting stays

pending appeal. It does not appear that there are any conflicting decisions on the issue here involved. As yet, no Circuit Court of Appeals has passed upon the appeals pending before it involving the question here presented. The decision of the District Court is in accord with applicable decisions. *Snyder* v. *Marks,* 109 U. S. 189; *Bailey* v. *George,* 259 U. S. 16; *Phillips* v. *Commissioner,* 283 U. S. 589.

I

THE MAINTENANCE OF THESE SUITS IS PROHIBITED BY SECTION 3224, REVISED STATUTES

Since the beginning of our judicial system, this Court has recognized the general equity rule that collection of taxes may not be enjoined where an adequate remedy at law has been provided. *Matthews* v. *Rodgers,* 284 U. S. 521; *Stratton* v. *St. L. S. W. Ry.,* 284 U. S. 530. See also *State Railroad Tax Cases,* 92 U. S. 575. This was merely the application to the field of taxation of a cardinal principle of equity jurisprudence, which was given legislative sanction in Section 267 of the Judicial Code.

This rule applies with particular force to Federal taxes. *Nichols* v. *United States,* 7 Wall. 122; *State Railroad Tax Cases, supra; Snyder* v. *Marks,* 109 U. S. 189; *Corbus* v. *Gold Mining Co.,* 187 U. S. 455; *Dodge* v. *Osborn,* 240 U. S. 118; *Graham* v. *duPont,* 262 U. S. 234. This Court has recognized that the prompt collection of the revenue is one of the most important functions of Government, be-

cause taxes are "the sole means by which sovereignties can maintain their existence." *Bank of Commerce* v. *Tennessee,* 161 U. S. 134, 146. Accordingly, it has recognized "the right of the United States to collect its internal revenue by summary administrative proceedings." *Cheatham* v. *United States,* 92 U. S. 85, 88, 89. See also *Phillips* v. *Commissioner,* 283 U. S. 589, 595. Section 3224, Revised Statutes, which was enacted in 1867, is declaratory of this latter principle and has been given effect repeatedly.

The doctrine of "pay first and litigate later" is an elementary principle in our system of taxation. It was upon the basis of this summary procedure for the collection of taxes that the Government has provided that which has come to be known as a "system of corrective justice" recognized in the *State Railroad Tax Cases, supra,* wherein this Court said (p. 613):

> The government of the United States has provided, both in the customs and in the internal revenue, a complete system of corrective justice in regard to *all taxes imposed by the general government,* which in both branches is founded upon the idea of appeals within the executive departments. If the party aggrieved does not obtain satisfaction in this mode, there are provisions for recovering the tax after it has been paid by suit against the collecting officer. *But there is no place in this system for an application to*

> *a court of justice until after the money is paid.* (Italics supplied.)

Cf. *United States* v. *Jefferson Electric Co.*, 291 U. S. 386.

Whatever exceptions there are to the application of Section 3224, Revised Statutes, these cases do not fall within those exceptions.[3] The effect of this Section as construed and applied by this Court may be summed up as follows: If the assessment is of a tax for revenue purposes as distinguished from a penalty made and attempted to be enforced by the proper revenue officers of the United States, upon articles within the purview of the taxing statute, under color of their offices, its collection cannot be stayed by an injunction. *Cheatham v. United States, supra; State Railroad Tax Cases, supra; Snyder* v. *Marks, supra; Pacific Whaling Co.* v. *United States,* 187 U. S. 447; *Corbus* v. *Gold Mining Co., supra; Dodge* v. *Osborn, supra; Dodge* v. *Brady,* 240 U. S. 122; *Bailey* v. *George, supra; Graham* v. *duPont, supra; Phillips* v. *Commissioner, supra.*

All of the results predicted by petitioners in their bills can be avoided by the payment of the tax

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[3] *Hill v. Wallace*, 259 U. S. 44; *Lipke* v. *Lederer*, 259 U. S. 557; *Regal Drug Corp.* v. *Wardell*, 260 U. S. 386; *Miller* v. *Nut Margarine Co.*, 284 U. S. 498, are not to the contrary. They rest upon their own peculiar facts. The first three cases involved penalties. See *Graham v. duPont, supra.* In the *Nut Margarine Co.* case the Court found that no tax was imposed by law upon the article sought to be taxed. These cases are the only instances, since the enactment in 1867 of Section 3224, in which this Court has sanctioned exceptions to its prohibition.

sought to be enjoined. Section 3224 is an inhibition against the maintenance of these suits.

II

PETITIONERS' REMEDY AT LAW IS PLAIN, ADEQUATE, AND COMPLETE

Petitioners contend (Br. 23) that the provisions of Section 21 (d)[4] (*infra,* p. 22), which require certain proof as a condition to the refund of taxes if held invalid, are unconstitutional. Section 21 (d) provides that a claimant must establish "to the satisfaction of the Commissioner of Internal Revenue", after opportunity and notice for hearing, that—

> * * * neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. * * *

---

[4] Added by Section 30 of the Act of August 24, 1935 (Public, No. 320, 74th Con., 1st Sess.)

This Court, in construing a similar statute, in *United States* v. *Jefferson Electric Co.*, 291 U. S. 386, said (p. 402):

> We do not perceive in the restriction any infringement of due process of law. If the taxpayer has borne the burden of the tax, he readily can show it; and certainly there is nothing arbitrary in requiring that he make such a showing. If he has shifted the burden to the purchasers, they and not he have been the actual sufferers and are the real parties in interest; * * *.

Congress in the Agricultural Adjustment Act, as amended, has recognized and applied the principles announced by this Court in that decision.

The records in these cases consist of petitioners' bills of complaint and respondent's motions to dismiss. It is urged by petitioners (Br. 29) that since the cases were heard on motions to dismiss the bills of complaint, all allegations made therein must be accepted as true. Petitioners contend that the bills allege that it is impossible for any rice processor to prove whether or not the tax or any part thereof has been passed on, passed back, or borne by it. It is submitted that the conclusions set forth in the bills of complaint are insufficient to show that compliance with Section 21 (d) is impossible. A motion to dismiss, like a demurrer, admits only facts well pleaded. As stated by this Court in *Pacific States Box and Basket Co.* v. *White* (November 18, 1935):

> The burden is not sustained by making allegations which are merely the general conclusions of law or fact.

In this connection the attention of the Court is invited to the provisions of Section 15 (c) and 17 (a) of the Act, *infra* (p. 19). These sections provide for refunds or credits of taxes upon articles processed from basic commodities subjected to the processing tax. Pursuant to the Act the Secretary of Agriculture, with the approval of the President, has prescribed regulations fixing conversion factors for such articles to establish the amount of such refunds. Conversion factors so fixed for articles processed from rice have been adopted by the Secretary of the Treasury in Treasury Decisions 4565 and 4586, promulgated July 10, 1935, and September 9, 1935, respectively, to establish the amount of refunds due with respect to articles processed from rice. The annual report of the Commissioner of Internal Revenue for the fiscal year ending June 30, 1934, discloses that during the fiscal year covered by the report 45,278 claims for refunds or credits under Sections 15 (c) and 17 (a) were filed with the Commissioner of Internal Revenue. Of these claims 14,878, aggregating $3,267,186.34, were allowed. On hand pending consideration on June 30, 1934, were 28,034 claims aggregating $22,160,211.78. No report has as yet been issued as to the number of such claims received or acted upon during the fiscal year 1935.

We submit that the refunds in other industries accepted on the theory that the amount of the processing tax can be allocated to individual products as a part of their cost, the finding by the Secretary of Agriculture that similar allocation is practicable for rice, and the adoption of this finding by the Secretary of the Treasury for refund purposes raise an inference that it is not impossible to determine what portion, if any, of the processing tax on rice is passed on to purchasers of the products resulting from the processing of rice.

When the allegations of the bill are examined in the light of the material above adverted to, and the reasonable inference to be drawn therefrom, it is submitted that the allegations which are relied upon to establish inadequacy of remedy do no more than show an insufficiency of proof in these particular cases. As stated in *Burnet* v. *Houston,* 283 U. S. 223, 228:

> The impossibility of proving a material fact, upon which the right to relief depends, simply leaves the claimant upon whom the burden rests with an unenforcible claim, a misfortune to be borne by him, as it must be borne in other cases, as the result of a failure of proof.

It is well settled that failure of proof is not sufficient ground to justify injunctive relief. See *Rees* v. *City of Watertown,* 19 Wall. 107, 124; *Thompson* v. *Allen County,* 115 U. S. 550, 554; *Newell* v. *Nichols,* 75 N. Y. 78, 90; *Marlin Fire Arms Co.* v. *Shields,* 171 N. Y. 384, 391.

III

THE MAINTENANCE OF THESE PROCEEDINGS IS PROHIBITED BY SECTION 21 (A) OF THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED

Clearly, Section 21 (a)[5] of the Agricultural Adjustment Act, as amended, broadens the scope of Section 3224 and is a specific prohibition against granting injunctive relief with respect to the collection of the processing taxes here involved. It is contended, however, that this broadening of the scope of Section 3224 violates the principle of the separation of powers (Section 2 of Article III of the Constitution), in that it is an undue interference by the legislative branch of the Government with the judicial power.

Under applicable decisions of this Court this contention would seem to be without merit. In *Kline* v. *Burke Constr. Co.*, 260 U. S. 226, 234, it was held that Congress could "give, withhold or restrict" such jurisdiction of the inferior Federal courts "at its discretion * * *. And the jurisdiction having been conferred may, at the will of Congress, be taken away in whole or in part." See also *Cary* v. *Curtis*, 3 How. 235.

Since there is no vested right to an injunction against the collection of taxes claimed to have been

[5] Added by Section 30 of the Act of August 24, 1935 (Public, No. 320, 74th Cong., 1st Sess.). This section expressly forbids the maintenance of any action having the purpose or effect of preventing the collection of taxes accruing after August 24, 1935, under the Agricultural Adjustment Act, *infra*, p. —.

illegally exacted (*Smallwood* v. *Gallardo,* 275 U. S. 56), petitioner cannot complain because of the provision of Section 21 (a).

IV

PETITIONERS WILL BE UNJUSTLY ENRICHED IF PAYMENT OF THE TAX IS WITHHELD

The object of Congress in limiting refunds and credits in Section 21 (d) to that portion of the tax actually borne by the processor is clear. As stated in the report of the conferees, H. Rep. No. 1757 (p. 32): "This provision embodies a doctrine that no taxpayer should be unjustly enriched by a return of the tax if, in fact, he has not borne it." This principle has been consistently applied by the courts in cases involving Federal taxation. *United States* v. *Jefferson Electric Co., supra; White* v. *Stone,* 78 F. (2d) 136 (C. C. A. 1st), certiorari denied, October 14, 1935; *Champ Spring Co.* v. *United States,* 47 F. (2d) 1 (C. C. A. 8th), certiorari denied, 283 U. S. 252; *Standard Oil Co.* v. *United States,* 5 Fed. Supp. 975, 985 (C. Cls.). We submit that to permit petitioners to maintain their suit for injunctive relief would defeat this policy of Congress and would be inconsistent with applicable principles of equity. To the extent that petitioners may be collecting from their customers the amount of any processing tax due upon the processing of the products purchased by such customers,

any processing taxes retained and not paid by petitioners would in fact constitute unjust enrichment. The extent to which petitioners are passing on the processing tax should be determined in the manner provided by Congress in Section 21 (d).

If petitioners are permitted to obtain temporary or permanent injunctions against the collection of taxes, prior to a determination of their unconstitutionality and a subsequent threat to collect, either the petitioner or some contract beneficiary of petitioner would be unjustly enriched. When the tax is paid, it is generally passed on to the first and subsequent purchasers. Since the ultimate consumer is not in a position to recover, should the tax be held unconstitutional, there would be in this instance a receipt by the Government of invalid taxes. If on the other hand the tax is not paid, because collection is enjoined, or payment is directed to be made into court, either the processor or some purchaser in the chain of title (provided the processor agrees to reimburse such purchaser if the processor does not ultimately pay) gains the tax, although it has already been included in the price charged a purchaser. As between the Government and a taxpayer or his purchaser, it is equitable for the Government to have the advantage of the tax payment. The situation may perhaps be likened by way of analogy to the doctrine of escheat.

Equity follows the law and requires a suitor to show clearly his right to equitable relief. It was stated in *United States* v. *Jefferson Electric Co., supra* (p. 400):

> We cannot assent to the view that a court may give a judgment awarding to taxpayer a refund without inquiring whether he has borne the burden of the tax or has reimbursed himself by collecting it from the purchaser.

Under Section 21 (d) of the Act, as amended, petitioners are limited in their recovery, in the event that the processing tax involved is declared to be unlawfully collected, to that portion of the tax they have borne. They are rightly denied recovery of that portion borne by the consumer or the producer. This limitation is for the express purpose of preventing recovery by petitioners of those processing taxes to which they are not in equity and good conscience entitled.

Should this Court deny the petitions for certiorari, there would, of course, be no occasion for considering petitioners' motions for a temporary injunction to preserve the status quo. No basis appears for granting the motions unless they be granted as incidental to the issuance of writs of certiorari to review the orders of the courts below.

CONCLUSION

Wherefore it is respectfully submitted that the petitions for writs of certiorari and the motions to preserve the status quo should be denied.

STANLEY REED,
Solicitor General.
FRANK J. WIDEMAN,
Assistant Attorney General.
ANDREW D. SHARPE,
M. H. EUSTACE,
EDWARD H. HORTON,
Special Assistants to the Attorney General.

NOVEMBER 1935.

APPENDIX

Judicial Code:

SEC. 262. *Power to issue writs.* The Supreme Court and the district courts shall have power to issue writs of *scire facias.* The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law (U. S. C., Title 28, Sec. 377).

* * * * *

SEC. 267. *Suits in equity, when not sustainable.* Suits in equity shall not be sustained in any court of the United States in any case where a plain, adequate, and complete remedy may be had at law (U. S. C., Title 28, Sec. 384).

Revised Statutes:

SEC. 3224. No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court. (U. S. C., Title 26, Sec. 1543.)

Agricultural Adjustment Act, c. 25, 48 Stat. 31, Sections 15 (c), 17 (a), 19 and 21, as amended by the Act of August 24, 1935, Public, No. 320, 74th Cong., Sections 29 and 30, respectively.

SEC. 15. * * *

(c) Any person, including any State or Federal organization or institution, delivering any product to any organization for

charitable distribution, or use, including any State or Federal welfare organization, for its own use, whether the product is delivered as merchandise, or as a container for merchandise, or otherwise, shall, if such product or the commodity from which processed is under this title subject to tax, be entitled to a refund of the amount of any tax due and paid under this title with respect to such product so delivered, or to a credit against any tax due and payable under this title of the amount of tax which would be refundable under this section with respect to such product so delivered: *Provided, however,* That no tax shall be refunded or credited under this section, unless the person claiming the refund or credit establishes, in accordance with regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury (1) that he has not included the tax in the price of the product so delivered or collected the amount of the tax from the said organization, or (2) that he has repaid, or has agreed in writing to repay, the amount of the tax to the said organization. The word "State" as used in this section shall include a State and any political subdivision thereof.

SEC. 17.(a) Upon the exportation to any foreign country (and/or to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam) of any product processed wholly or partly from a commodity with respect to which product or commodity a tax has been paid or is payable under this title, the tax due and payable or due and paid shall be credited or refunded. Under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, the credit or refund shall be

allowed to the consignor named in the bill of lading under which the product is exported or to the shipper or to the person liable for the tax provided the consignor waives any claim thereto in favor of such shipper or person liable for the tax. In the case of rice, a tax due under this title which has been paid by a tax payment warrant shall be deemed for the purposes of this subsection to have been paid; and with respect to any refund authorized under this section, the amount scheduled by the Commissioner of Internal Revenue for refunding shall be paid, any provision of law notwithstanding. In the case of sugar beets and sugarcane, this subsection shall be applicable to exports of products thereof to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam only if this title with respect to sugar beets and sugarcane is not made applicable thereto. The term " product " includes any product exported as merchandise, or as a container for merchandise, or otherwise.

SEC. 19. * * *

(b) All provisions of law, including penalties, applicable with respect to the taxes imposed by Section 600 of the Revenue Act of 1926, and the provisions of Section 626 of the Revenue Act of 1932, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable in respect of taxes imposed by this title:

* * * * *

SEC. 21. (a) No suit, action, or proceeding (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing

or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (d) of this section, may be reserved in the court's order.

* * * * *

(d) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article proc-

essed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be refunded or credited to any person (not a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (a) and (b) of section 16, had the tax terminated by proclamation pursuant to the provisions of section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish, to the satisfaction of the Commis-

sioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund, or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held invalid a claim therefor (conforming to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2) no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such

claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, on jurisdiction of such courts based upon the amount in controversy.

* * * * *

(g) The provisions of section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax, or any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of section 317 of the Tariff Act of 1930.

Revised Statutes:

SEC. 3226. [As reenacted without change by Sec. 1113 (a) of the Revenue Act of 1926, c. 27, 44 Stat. 9, and as amended by Sec. 1103 (a) of the Revenue Act of 1932, c. 209, 47 Stat. 169.]

No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously

or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which suit or proceeding relates. (U. S. C., Title 26, Sec. 1672.)

U. S. GOVERNMENT PRINTING OFFICE: 1939

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1935

No. 585

FARMERS RICE MILLING CO., INC.,
PETITIONER,

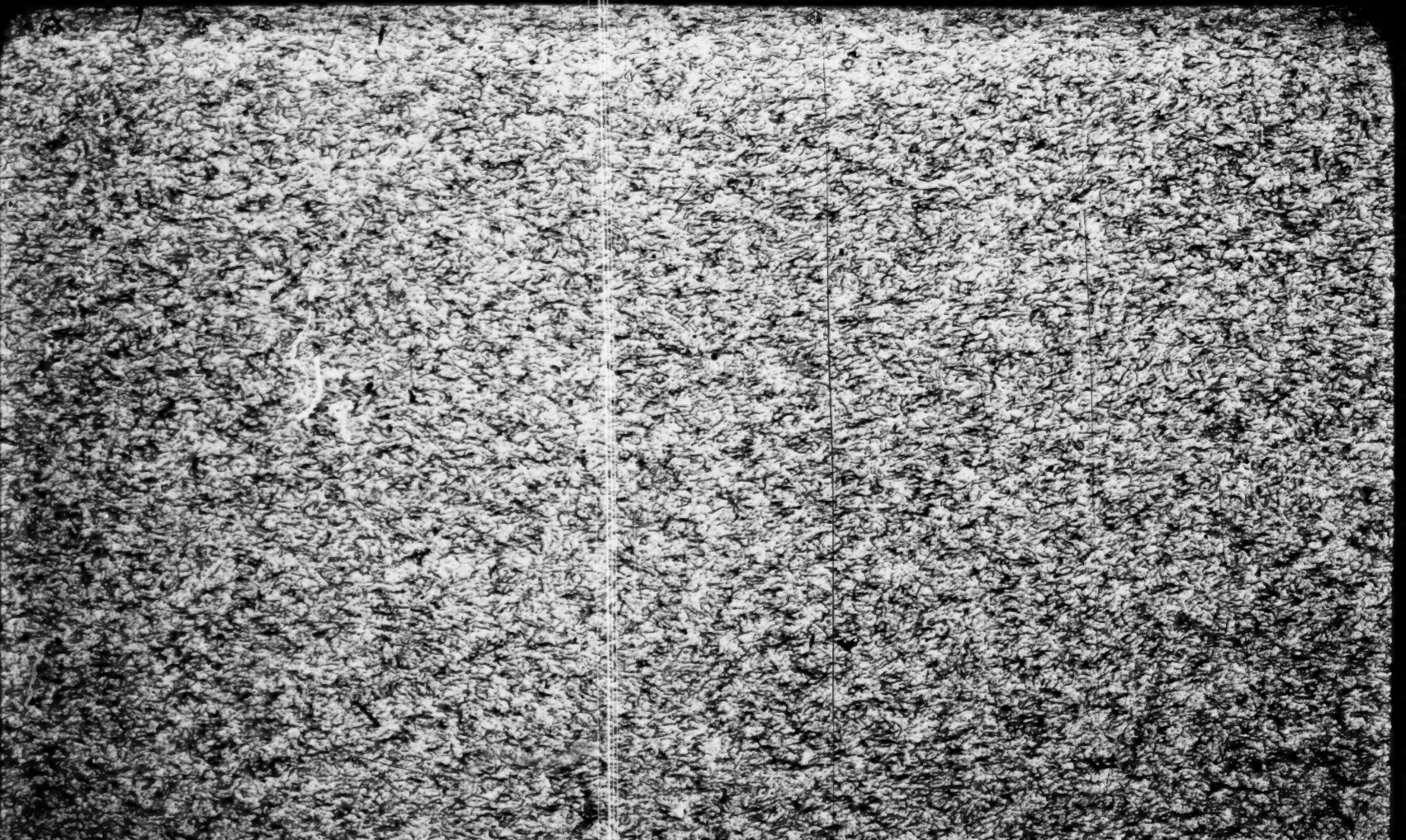
v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA,
RESPONDENT.

MOTION FOR INJUNCTION TO PRESERVE STATUS QUO

C. A. McCOY,
Attorney for Petitioner.

McCOY, KING & JONES,
Lake Charles, La.,
Of Counsel.



No.....

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MOTION FOR INJUNCTION TO PRESERVE STATUS QUO

TO THE HONORABLE BENJAMIN N. CARDOZO, *Associate Justice of the Supreme Court of the United States:*

Comes now Farmers Rice Milling Co., Inc., by its counsel, C. A. McCoy, and respectfully states that petitioner on October 28, 1935, brought a bill in equity in the United States District Court for the Eastern District of Louisiana, New Orleans Division, entitled Farmers Rice Milling Co., Inc., Plaintiff, v. Rufus W. Fontenot, Individually and as

Acting United States Collector of Internal Revenue for the District of Louisiana, Defendant, and numbered 327 in Equity in the New Orleans Division of said court. In its bill of complaint in said cause petitioner prayed for a temporary restraining order to be issued immediately, and for a preliminary injunction after notice to the respondent, and for a permanent injunction on the final hearing of said cause, enjoining the respondent from assessing or collecting or attempting to assess or collect from the petitioner in any manner whatsoever, whether by lien or jeopardy or distraint proceedings, in court or otherwise, any processing taxes levied under and pursuant to the Act of the Congress of the United States known as the Agricultural Adjustment Act, and amendments thereto, or purported to be levied by said Act, upon the petitioner for the processing of rice during the month of September, 1935, and for subsequent months, and any interest or penalty on account of petitioner's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of petitioner. Said application for preliminary injunction was set down for hearing before the judge of said District Court at New Orleans on Monday, October 28, 1935. Notice thereof was duly waived by respondent. Prior to said hearing respondent filed his motion to dismiss said bill, copies of which motion and also of petitioner's bill of complaint are contained in the record in this cause now brought to this Court on petition for certiorari.

After a hearing on petitioner's motion for preliminary injunction and on respondent's motion to dismiss, the Honorable John McDuffie, acting judge of said District Court, on October 28, 1935, refused petitioner's motion for preliminary injunction, granted the motion of respondent to dismiss the said bill of complaint, and dismissed the said bill of complaint, to which petitioner herein duly excepted. Thereafter on the 29th day of October, 1935, the petitioner herein in open court and in the presence of counsel for respondent filed its petition for an appeal, which was duly allowed by the said judge of the United States District Court who tried said cause, and filed at the same time its assignments of error, and also a cost bond was duly filed and approved by the said judge of said District Court. At the time petitioner presented its said petition for appeal, it also petitioned said judge of the District Court to grant it an injunction enjoining the respondent in the manner set out in its request for a preliminary injunction in its bill of complaint, pending the appeal of petitioner to the Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, but the said judge of said District Court refused petitioner's said petition and refused to grant petitioner said injunction pending said appeal.

Petitioner perfected its appeal to the Circuit Court of Appeals for the Fifth Circuit, making said cause returnable at New Orleans, Louisiana, as provided by law, and duly caused to be prepared a transcript of the record in said cause and filed the

same, in accordance with law and within the time allowed by law, in the office of the clerk of said Circuit Court of Appeals at New Orleans, Louisiana, and said cause was duly docketed in that Court as "Farmers Rice Milling Co., Inc., Appellant, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, No. 7950."

On November 4, 1935, after notice to respondent, petitioner filed in said Circuit Court of Appeals its motion for a preliminary injunction pending the hearing of its appeal enjoining respondent from assessing or collecting from petitioner said taxes. The Circuit Court of Appeals on November 5, 1935, denied petitioner's said motion, stating in its opinion that

> "the taxpayer has a remedy at law to recover back any taxes illegally exacted, and, further that the provisions of the Act as amended deprive the Court of jurisdiction to grant injunctive relief."

Both in the District Court and in the Circuit Court of Appeals petitioner offered to give such security as the court might require in the event the court should ultimately decide the cause against petitioner.

Petitioner has filed in the Supreme Court of the United States its petition for a writ of certiorari in this cause and the record therein.

In said bill of complaint petitioner alleged that the amount of processing taxes on account of the

rice processed by the petitioner during the month of September, 1935, was $11,946.25, and that under said Agricultural Adjustment Act petitioner was required to pay said amount to respondent on or before October 30, 1935, and that respondent was charged with the duty of collecting said tax, and if said tax were not paid on or before October 30, 1935, respondent would assess said tax against the petitioner and serve upon petitioner notice and demand for the payment thereof and would allow petitioner ten days from receipt of such notice within which to pay the same; that in the event said tax should not be paid within said time, respondent would assess against petitioner a penalty equal to 5 per cent of the amount of the tax and interest on the tax at the rate of 1 per cent per month from the due date of the tax until paid; that if the petitioner failed to pay the tax within said ten days, respondent would proceed to collect the tax, penalty and interest by filing a notice of lien on all of petitioner's property and by distraining upon and selling such of petitioner's property as might be necessary to realize the amount of said tax, penalties and interest; and that additional processing taxes for months subsequent to September, 1935, will accrue and be assessed against and collected from the petitioner in the same manner as the tax for the month of September.

Petitioner alleged that the said processing tax was illegal and unconstitutional, and violated various provisions of the Constitution of the United States in many particulars, more fully set forth in peti-

tioner's bill of complaint. The petitioner also alleged that under an amendment to said Agricultural Adjustment Act approved on August 24, 1935, a Section 21(d) was added to said Act, which section provides in substances that petitioner should be allowed no recovery of any of said taxes paid, if the same should be illegal or unconstitutional, unless petitioner established to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner should so find, that neither petitioner nor any person directly or indirectly under petitioner's control or having control over petitioner, has, directly or indirectly, included such amount in the price of the rice with respect to which it was imposed or of any article processed from the rice with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing rice, and that the price paid by the petitioner or such person for said rice was not reduced by any part of such amount. Petitioner in said bill of complaint, alleged, as more fully set out therein, that under said Section 21 (d) it had no adequate remedy at law by which it could recover any part of said taxes if same were unconstitutional and illegal, and that it was impossible, owing to the peculiar conditions existing in the rice milling industry and in the purchase, milling and sale of rice, for petitioner to discharge the burden placed upon it by said Section 21 (d), all as more fully set out in petitioner's bill of complaint.

Petitioner further alleged that in said amendment of August 24, 1935, a new section known as Section 21 (a) was added to said Agricultural Adjustment Act, which in substance provided that no suit to enjoin the collection of said processing taxes should be maintained in any court. Petitioner further alleged that said section was not intended to apply, and did not apply, to the injunction prayed for by petitioner, inasmuch as petitioner had no adequate remedy at law. Petitioner further alleged that if said section should be interpreted as prohibiting the injunction prayed for by petitioner, then the said section, together with the other provisions of said Act, was invalid and in violation of the Fifth Amendment to the Constitution, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes would be collected from petitioner and petitioner would have no remedy by which it could recover taxes and would have no remedy to prevent the collection of said unlawful taxes and would be forever deprived of the right to test the constitutionality of said taxes.

Petitioner further alleged that said Section 21 (d) denied the petitioner a complete and adequate remedy at law for the various other reasons set forth in said bill of complaint.

At the hearing before the district judge petitioner introduced in evidence the affidavit of W. M. Reid, executive secretary of The Rice Millers' Association, a man of twenty-six years' experience in the rice business, in which affidavit he set out fully and

in detail the methods of conducting the rice business and the manner in which the rough rice market and the clean rice market is made, showing that it would be utterly impossible for any rice miller to accurately determine whether he had made a profit or a loss on any given transaction, much less prove whether he had passed the tax, or any part thereof, on. Petitioner also introduced in evidence the affidavit of Homer L. Bruce, a practicing attorney at the bar at Houston, Texas, setting out in detail the proceedings under a complaint brought by the Secretary of Agriculture to revoke the license of a rice mill under the Act in effect prior to the present Act. The Secretary of Agriculture sought to revoke the license of this mill for failure to sell clean rice and rice products processed from rough rice at a price approximately 89 cents higher than the price paid for the rough rice. The affidavit showed that, although the government was able to prove the cost of the rough rice and to trace the particular rough rice into various "mixes" of clean rice and the price procured for these "mixes" of clean rice, it was never able to prove that the price procured for the clean rice processed from the particular lot of rough rice, was not 89 cents more than the price paid for the rough rice, because of the fact that clean rice is customarily sold in "mixes" of various lots of rice and there was no way to allocate the price procured for the mixed rice sold to the various lots of rough rice which went into the mix.

In the meantime, petitioner alleges that for the foregoing reasons and those set forth in its said

bill of complaint in said cause, and because the judge of said District Court in his said order dismissed said bill of complaint and refused to grant petitioner the injunction prayed for pending the appeal in this case, and because the Circuit Court of Appeals has denied petitioner's application for an injunction pending the hearing of its appeal, and because it will be several months before said Circuit Court of Appeals will hear its appeal and because the Circuit Court of Appeals in its opinion and order denying petitioner its said injunction has virtually decided and disposed of petitioner's appeal for all practical purposes, the respondent herein will, to the irreparable damage and loss of the petitioner herein, proceed to collect the said taxes for September, 1935, which are now due and unpaid, from petitioner, and said taxes for subsequent months, unless restrained by a preliminary injunction granted by this Court. The petitioner alleges that not only has it no complete remedy at law, but in fact no remedy at law at all, for the reasons hereinabove set forth and set forth more in detail in said bill of complaint, that it is faced with the alternative of paying the tax with the certainty that no remedy at law exists for its recovery in case it be held that it was unconstitutionally assessed, or of refusing to pay and running the risk of becoming liable for the heavy civil and criminal penalties provided in the Act, and that the said judge of said District Court should not have dismissed said bill of complaint, but should have overruled the same, and upon the hearing should have granted the prelimi-

nary injunction as prayed for in said bill of complaint, and the Circuit Court of Appeals should have granted petitioner the injunction pending its appeal.

Petitioner would further show that there is now pending in the Supreme Court of the United States a case involving the constitutionality of the said Agricultural Adjustment Act, being the same case in which the Circuit Court of Appeals for the First Circuit declared the Act to be unconstitutional, and that the Supreme Court has set said cause for oral argument on Monday, December 9, 1935; that a decision by the Supreme Court of the United States upon the validity of the said Act may be expected within a reasonable time thereafter; that the first benefit payment to farmers provided for in said Act has been made, and that under the standard form of contract between the Secretary of Agriculture and rice farmers no further payment is due until such time after December 1, 1935, as the secretary shall determine and declare what further amount of benefit payments shall be made and when they shall be made; that the taxes to be collected under said Act are for the purpose of making these benefit payments and that since the Secretary of Agriculture need make no further benefit payments until such time after December 1, 1935, as may be fixed by him, the delay of the Government in collecting these taxes which might be occasioned by the granting of the injunction prayed for herein will not occasion any injury to the Government nor will it unduly interfere with the achievement of the program set out in said Act if the Act be held constitutional. On the

other hand, as hereinabove alleged, great and irreparable damage will be done to petitioner in the event the law is held unconstitutional unless the injunction hereinafter prayed for is granted.

Petitioner further shows that it is informed that every other Circuit Court of Appeals to consider the question, namely, the Second, Sixth, Eighth, Ninth and Tenth, has granted injunctions pending appeal contrary to the action herein by the Circuit Court of Appeals for the Fifth Circuit.

Petitioner further shows that unless an injunction pending appeal be granted so as to preserve the *status quo,* the subject-matter of the suit will be lost and the jurisdiction of this Honorable Court defeated. Such injunction is necessary to preserve the jurisdiction of this Honorable Court, and in order that petitioner may enjoy the just fruits of a favorable decision herein.

The petitioner states that it is ready and willing to give any reasonable bond or other security that may be required by any order of this Court, including the deposit from month to month of the amount of tax due, in a depository to be designated by the Court, and therefore prays that this Court make an order granting petitioner a preliminary injunction enjoining and restraining the respondent, and his successors in office, from assessing or collecting or attempting to assess or collect from petitioner in any manner whatsoever, whether by lien or jeopardy or distraint proceeding, in court or otherwise, the said processing taxes for the month of September and subsequent months and any other processing taxes

under and pursuant to said Agricultural Adjustment Act upon rice processed by petitioner, and any interest or penalty on account of petitioner's failure to pay said processing taxes, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the petitioner, pending the hearing of petitioner's petition to this Honorable Court for a writ of certiorari in this cause, and if said petition is granted, pending the hearing of this cause by this Honorable Court, and upon such conditions and terms as to this Court may seem just.

C. A. McCoy,
Attorney for Petitioner.

McCoy, King & Jones,
Lake Charles, La.,
Of Counsel.

STATE OF LOUISIANA,
PARISH OF CALCASIEU.

Before me, the undersigned authority, on this day personally appeared C. A. McCoy, known to me and who being by me duly sworn, deposed and said on his oath as follows: That he is one of counsel for petitioner in the above cause, and has read the foregoing motion; that he is personally familiar with the matters and things therein alleged, and that the same are true except as to such matters as are alleged on information and belief, and as to them he believes them to be true. C. A. McCoy

Sworn to and subscribed before me this the 12th day of November, A. D. 1935.

[SEAL] Marie Sunderlin

Notary Public in and for Calcasieu Parish, La.

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Office Supreme Court, U.S.
FILED
DEC 9 1935
CHARLES ELMORE CROPLEY

Nos. 577-581, 585-587

Supreme Court of the United States

OCTOBER TERM, 1935

RICKERT RICE MILLS, INC., PETITIONER,
v.
RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

A. B. DORE, PETITIONER,
v.
RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

UNITED RICE MILLING PRODUCTS CO., INC., PETITIONER,
v.
RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

BATON ROUGE RICE MILL, INC., PETITIONER,
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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR PETITIONERS

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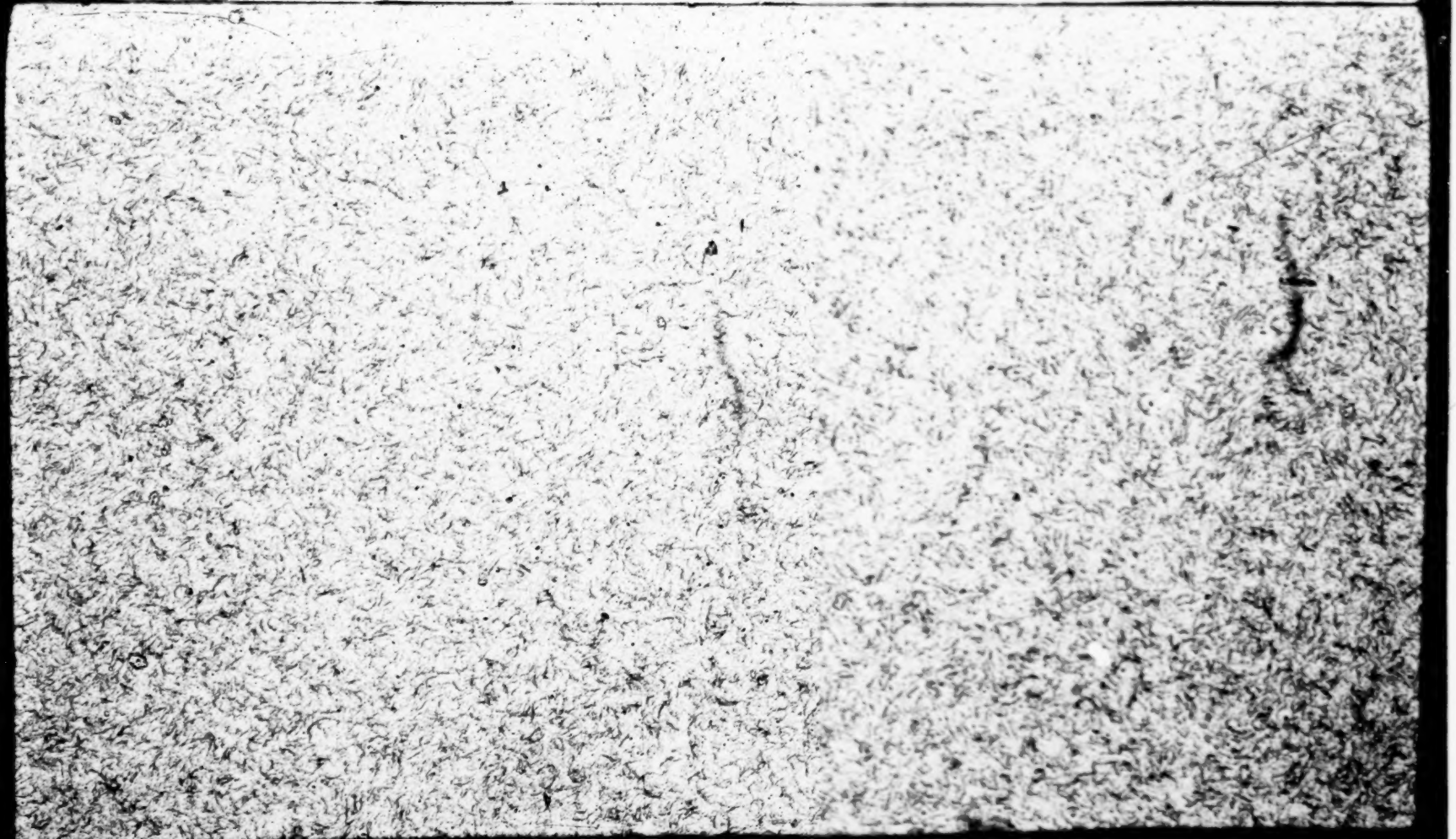

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(b) The Act is an attempt to control the production of agricultural commodities within the several States.

(c) The taxes are not levied for the general welfare or for a public purpose and deprive petitioners of their property without due process of law, contrary to the Fifth Amendment.

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Nos. 577-581, 585-587

Supreme Court of the United States

OCTOBER TERM, 1935

RICKERT RICE MILLS, INC., PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

A. B. DORR, PETITIONER,

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

UNITED RICE MILLING PRODUCTS CO., INC., PETITIONER,

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T. SIMON, PETITIONER,

v.

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BRIEF FOR PETITIONERS

I.

The Opinions of the Courts Below.

The District Court wrote no opinion and the Circuit Court of Appeals has not yet rendered any decision on the merits of the appeal. The *per curiam*

opinion of the court denying the injunction pending appeal is found on page 98* of the Record.

II.

Jurisdiction.

(1) Jurisdiction of these causes is conferred upon this Honorable Court by *Judicial Code, Section* 240, as amended; *United States Code, Title* 28, *Section* 347.

(2) The date of the judgments of the trial court to be reviewed is October 28, 1935 (R. 79), the date of the order of the Circuit Court of Appeals denying the injunctions pending appeal sought to be reviewed is November 5, 1935. (R. 98.)

III.

Statement of the Case.

October 25, 1935, petitioners filed their bills of complaint against respondent, individually and as Acting United States Collector of Internal Revenue for the District of Louisiana (R. 2), alleging the passage of the so-called Agricultural Adjustment Act, as amended, setting up pertinent provisions of the Act and alleging that the Act was, for various reasons, unconstitutional. (R. 3-15.) Petitioners then alleged that they were subject, as millers of rice, to the provisions of said Act, and that under

*Record references throughout are to the Record in No. 577, Rickert Rice Mills, Inc., Petitioner, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent. The records in all of the cases are identical except for certain inconsequential differences.

such provisions they were liable for a tax on rice processed by them; that the amount of said tax for the month of September, 1935, was about to become due, and that unless restrained the respondent would resort to the various summary procedures provided by statute for collecting said tax from petitioners unless such tax were paid. They alleged that from month to month thereafter additional taxes would become due, and that unless they were paid respondent would take similar summary action for their collection. (R. 15.) Petitioners alleged that they would be irreparably damaged by such action of the respondent for various reasons set out, and that if the tax were once paid or collected it would be irretrievably lost to petitioners. (R. 16.) Petitioners alleged that by the provisions of Section 21(d) of the Act as amended they were deprived of any adequate remedy at law to recover any taxes paid in the event the law were to be held unconstitutional. It was alleged that, apart from any question of the inherent impossibility of proving whether a tax such as that imposed by the Act was or was not "passed on," the rice milling business was, and of necessity had to be, operated in such manner that it was and would be impossible, with respect to any given lot of rice, to determine even whether such rice had been processed at a profit or a loss, much less to prove whether the tax with respect to such rice had or had not been "passed on." Rice millers, it was alleged, purchase rough rice from farmers at a price which is fixed by the competitive bidding

of the various rice millers. It is bought by "lots," each of which is given a number, and is purchased in large quantities and is kept on an average of several months before the rice and rice products made from it are sold. Ordinarily a major factor in the rough rice market is the clean rice market, but many other elements are involved such as the supply and demand for rough rice, the composite pessimism or optimism of rough rice buyers, the number of buyers in the field at a given time, etc. Individual millers have no power to arbitrarily depress the price paid for rough rice, but must pay the market price fixed under these conditions. The miller likewise sells the clean rice and rice products made from the rough rice on a competitive market in which he not only competes with other millers, but also with other commodities such as wheat, potatoes, beans, and other food products capable of being substituted for rice. If the price for rice is pushed too high, consumers will shift to other commodities which can be substituted for it, and the miller therefore cannot arbitrarily raise the price at which clean rice and rice products are sold for the purpose of passing on the tax or for any other purpose. Furthermore, when rough rice is milled it produces many grades of rice and products thereof, such as extra fancy head rice, fancy head rice, head rice, second head rice, screenings, brewers, polish, bran and hulls, all of which commodities have varying values and are used for different purposes. Some sell for more than the cost of the rough rice from which they are pro-

duced, and others sell for less. There is no accurate way of assigning any definite proportion of the price paid for the rough rice to the various grades of rice and rice products made from it. In addition, the clean rice processed from a given lot of rough rice is not ordinarily sold by itself, but is mixed with clean rice produced from other lots of rough rice. Rice is sold against samples which are made up by millers at the beginning of each season, and when a sale is made against such sample, a mixture is made of clean rice from various lots of rough rice in such manner as to match the particular sample. The rice when so mixed is sold at an aggregate price, and there is no way to accurately determine what part of the total price received for the mixture should be allocated to the particular rice processed from the various lots of rough rice. The milling cost of any given lot of rough rice is likewise, under practical operations, impossible of determination, because differing grades of rice and even differing lots of the same grade, require different milling procedures because of differences in the sizes and shapes of the grains, the thickness of the grains, the moisture content, conditions under which the rice was harvested, etc. In practical operations the milling operations have to be changed quickly from time to time as changes are made from one lot of rough rice to another. Furthermore, the amount of rice which is milled on a given day likewise affects the cost. For these reasons, petitioners alleged, even if it were otherwise possible to make the proof required by

Section 21(d), they could not accurately prove even whether they had made a profit or a loss on any given transaction, but could only tell at the end of the season whether the aggregate of all operations had resulted in a profit or loss. (R. 16-21.) Petitioners then alleged that Section 21(a) of the Act purported to forbid the granting of an injunction to restrain the collection of the taxes involved and that it, taken with the impossible burden of proof set up in Section 21(d) of the Act, would deprive petitioners of all right to test the validity of such taxes unless the relief prayed for were granted. (R. 22.) Petitioners alleged, however, that said Section 21(a) did not apply, and was not intended to apply, under the circumstances set forth in petitioners' bills of complaint, but that, if it were held to so apply, it was in contravention of the Fifth Amendment to the Constitution of the United States, in that it would result in unconstitutional taxes being forcibly collected from petitioners without petitioners having any remedy at any time to prevent the collection of the taxes or to test the constitutionality of the taxes. (R. 23.) Further allegations were that a multiplicity of claims and suits would be required to enforce petitioners' rights even if they were able to make the proof required by Section 21(d), and that in any event an actual refund of the taxes, if paid, could not be had, because Congress had made no appropriation therefor, and because of the tremendous sums involved there was no probability that Congress would make such appropriations. (R.

23.) Petitioners offered to give such security as the court might require and made the usual prayer for injunctive relief. (R. 24.) Petitioners' bills were duly verified, and there was appended to petitioners' bills of complaint as an exhibit the administrative rulings relating to the 1935 Southern Rice Production Adjustment program (R. 27), and the standard form of contract between the Secretary of Agriculture and rice producers. (R. 38.)

Respondent filed a return to the rule to show cause why a preliminary injunction should not issue which contained a blanket, though not specific, denial of the allegations of plaintiffs' bills of complaint. (R. 54.) Respondent likewise filed a motion to dismiss for want of jurisdiction. (R. 56.) The causes were consolidated for hearing in the trial court (R. 58), and on October 28th the District Judge granted respondent's motion in all the cases to dismiss them for want of jurisdiction, and entered an order to that effect. (R. 78.) Petitioners then moved for an injunction pending appeal which was denied by the court. (R. 79.) Petitioners duly filed their assignments of errors and motion for appeal, which was allowed. (R. 80, 81.) After the filing of their appeal bond (R. 82), their appeals were duly perfected to the Circuit Court of Appeals for the Fifth Circuit on November 4, 1935. (R. 98.) On the same day petitioners filed in that court a motion for a preliminary injunction pending appeal (R. 86), which was, on November 5, 1935, denied in a *per curiam* opinion which held that petitioners had a

"remedy" at law and that the provisions of the Agricultural Adjustment Act, as amended, deprived the court of jurisdiction to grant injunctive relief. (R. 97.) November 11, 1935, petitioners filed herein their petitions for certiorari, and briefs in support thereof, as well as motions for injunctions to preserve the *status quo* pending the proceedings in this Honorable Court. The petitions for certiorari were granted November 25, 1935, and on the same date the motions for injunctive relief were granted.

IV.

Questions Presented.

(1) Whether the Agricultural Adjustment Act, as amended on August 24, 1935, is constitutional.

(2) Whether, under the circumstances of these cases, the petitioners are entitled to injunctive relief.

V.

Statutes Involved.

R. S. §3224 and Sec. 21 of the Agricultural Adjustment Act as amended are set out in Appendix A. Secs. 115 to 131, Title 26, U. S. C., as amended, are set out in Appendix B. Sec. 19(b) of the Agricultural Adjustment Act, as amended, and Sec. 1114 of the 1926 Revenue Act are set out in Appendix C. All other pertinent provisions of the Act of Congress of May 12, 1933, c. 25, 48 Stat. 31, known as the Agricultural Adjustment Act, as amended on August

24, 1935, are set out in Appendix D. For the convenience of the court there is separately bound and filed Annex A to the brief which contains a compilation of the Agricultural Adjustment Act, as amended, showing clearly the changes made by the amendment of August 24, 1935.

VI.

Specification of Errors.

(1) The District Court erred in holding that it was without jurisdiction to hear petitioners' cases because of the provisions of R. S. §3224, and Sec. 21(a) of the Agricultural Adjustment Act, as amended.

(2) The District Court erred in refusing to grant petitioners a preliminary injunction pending a hearing on the merits.

(3) The District Court and Circuit Court of Appeals erred in holding that said Sec. 21(a) did not deprive petitioners of their property without due process of law contrary to the Fifth Amendment to the Constitution of the United States, in view of the allegations in the bills, admitted by the motion to dismiss, that petitioners were without remedy at law to recover the taxes paid if they were held to be illegal.

(4) The District Court and the Circuit Court of Appeals erred in holding that if said Sec. 21(a) forbade the granting of an injunction restraining the collection of the tax, and if petitioners had no

remedy at law to recover the same, if it be held they were illegally collected, respondent could nevertheless employ the summary proceedings for immediate collection of the tax provided in Secs. 115 to 131, Title 26, U. S. C., as amended, without depriving petitioners of their property without due process of law contrary to the Fifth Amendment to the Constitution of the United States.

(5) The District Court and the Circuit Court erred in holding that either or both R. S. §3224, and Sec. 21(a) of said Act prevented the granting of an injunction under the special and extraordinary circumstances presented by these cases.

(6) The Circuit Court of Appeals erred in holding that petitioners had "a remedy at law to recover back any taxes illegally exacted."

(7) The Circuit Court of Appeals erred in refusing to grant petitioners an injunction to preserve the *status quo* pending their appeal from the order discussing the bills.

(8) The Circuit Court of Appeals erred in refusing to grant petitioners an injunction pending the appeal for the purpose of preserving the appellate jurisdiction of that court.

(9) The Circuit Court of Appeals erred in holding either or both R. S. §3224, and Sec. 21(a) of said Act "deprived the court of jurisdiction to grant injunctive relief."

(10) The District Court and Circuit Court of Appeals erred in not holding the Agricultural Adjustment Act, as amended, to be violative of Art.

1, Sec. 1, Amendments Five and Ten of the Constitution of the United States.

Petitioners expect to rely on all of the foregoing specifications of error.

VII.

ARGUMENT

Summary of the Argument.

POINT A.

Neither R. S. §3224 nor Sec. 21(a) of the Agricultural Adjustment Act, as amended, properly interpreted, bars injunctive relief in these cases.

POINT B.

Sec. 21(d) of the Agricultural Adjustment Act, as amended, deprives petitioners of any adequate remedy at law.

POINT C.

If R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act, as amended, forbid the granting of an injunction in these cases they are unconstitutional.

POINT D.

The summary proceedings provided in Secs. 115 to 131, Title 26, U. S. C., as amended, are unconstitutional when applied to a taxpayer who has been

deprived of both legal and equitable remedies to test the constitutionality of the tax thus sought to be collected.

POINT E.

The Agricultural Adjustment Act, as amended, is unconstitutional.

(a) The Act is an attempt to regulate the price at which petitioners buy and sell rice in intrastate commerce.

(b) The Act is an attempt to control the production of agricultural commodities within the several States.

(c) The taxes are not levied for the general welfare or for a public purpose and deprive petitioners of their property without due process of law, contrary to the Fifth Amendment.

(d) The Act, as amended, contains an unconstitutional delegation of legislative power to the Secretary of Agriculture.

POINT A.

Inapplicability of R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act, as amended.

In order to make clear that R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act, as amended, are for all practical purposes identical in wording and in effect we here set them out side by side:

R. S. §3224.	A. A. A. Sec. 21(a)
No suit.	*No suit,* action or proceeding (including probate, administration, receivership, and bankruptcy proceedings)
shall be maintained in any court	*shall be* brought or *maintained in any court*
for the purpose of restraining the assessment or collection of any tax.	if such suit, action or proceeding is *for the purpose* or has the effect (1) *of* preventing or *restraining the assessment or collection of any tax* imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment. * * *

R. S. §3224 was originally passed in 1867 (*14 Stat. 475*) as an amendment to Sec. 19 of the Internal Revenue Act of July 13, 1866 (*14* Stat. *152*), which set up the administrative and legal machinery for the recovery of taxes illegally paid. The legislative history of this amendment sheds no light upon the congressional purpose in passing it. 49 *Harvard Law Review* 109 (1935). However, when the Act of 1866, thus amended, is read as a whole, the congressional intent would seem perfectly clear. Having set up what appeared to be complete and adequate machinery for the protection of taxpayers against illegal exactions of taxes, Congress very

properly provided that, under such circumstances, injunctions should not issue to restrain the collection of such taxes. With this appearing on the face of the Act, it is submitted that it would be improper to attribute to Congress the additional intent that injunctions should not issue to restrain the collection of an illegal tax, even in those extraordinary and unusual cases where the administrative and legal machinery for recovery of such taxes set up in the Act were wholly inadequate to protect the taxpayer from irreparable injury. Being an integral part of the system of "corrective justice" in the collection of taxes, it should be properly construed to apply only to the normal situation where the system is successfully working as a "corrective system of justice" and as not applicable in the unusual case where that system breaks down Any other interpretation of the provision would entirely ignore the part it was intended to play in this system and would give to it an effect and meaning wholly disassociated from its proper setting The fact that in rearranging the statutes the codifiers have separated R. S. §3224 from the section of the Act which it originally amended of course in no wise alters its scope or purpose nor does it call for any different interpretation from that which would have been originally required. *Anderson v. Pacific Coast Steamship Company* (1912), 225 U. S. 187, 199. This court has consistently held that the prohibition of the section is not absolute, but that courts have jurisdiction to grant injunctions against the collection of taxes

when special and extraordinary circumstances exist. The most recent expression of the court on the question is found in *Miller v. Standard Nut Margarine Company* (1932), 284 U. S. 498, 509, where the court said:

> "The section does not refer specifically to the rule applicable to cases involving exceptional circumstances. The general words employed are not sufficient, and it would require specific language undoubtedly disclosing that purpose, to warrant the inference that Congress intended to abrogate that salutary and well established rule. * * * It has never held the rule to be absolute, but has repeatedly indicated that extraordinary and exceptional circumstances render its provisions inapplicable."

To the same effect is *Hill v. Wallace* (1922), 259 U. S. 44, 62. *cf. Dodge v. Osborn* (1916), 240 U. S. 118, 122.

Sec. 21(a) was included in the amendments of August 24, 1935, to the Act after numerous suits to restrain the collection of the tax had been filed throughout the country in which the contention was being made, and the courts were holding, that the supposed tax was in fact no tax at all, but a penalty. *e. g., Penn v. Glenn* (April 13, 1935), 10 Fed. Supp. 483, 484; *F. G. Vogt & Sons, Inc., v. Rothensies* (July 17, 1935), 11 Fed. Supp. 225, 230; *Armour & Company v. Harrison* (August 1, 1935, D. C. N. D. Ill., not yet reported). Under these circumstances it is plain that the purpose of Congress in including this section in the amendments was to

make certain its intention that the principle of R. S. §3224 should apply to suits brought to restrain collection of these particular taxes. Having expressed its intention in words practically identical with those used in R. S. §3224, the amendment must be interpreted in the light of the well settled rule that, when a statute is reenacted in the same words as a previous statute which has received a judicial interpretation, the reenacted statute includes the previous judicial interpretation. *Louisville Cement Co. v. Interstate Commerce Commission* (1918), 246 U. S. 638, 644. Had any different meaning been intended Congress could very easily and in few words have expressed it. Likewise both R. S. §3224 and Sec. 21(a) of the Act, as amended, must be construed in the light of the well settled principle that a statute, susceptible of two constructions, should be construed in such a way as not to raise doubts as to its constitutionality. *Panama Railroad Company v. Johnson* (1924), 264 U. S. 375; *Michaelson v. United States* (1924), 266 U. S. 42. As will be pointed out hereafter, to interpret these statutes, or either of them, in the manner contended for by the Government would raise grave doubts as to its or their constitutionality.

It is therefore submitted that these statutes should be construed as not forbidding injunctive relief in *all* cases.

POINT B.

Sec. 21(d) of the Agricultural Adjustment Act, as amended, deprives petitioners of their remedy at law.

Sec. 21(d)* of the Act, as amended, forbids the return of any taxes illegally collected under the Act unless the taxpayer proves, to the satisfaction of the Commissioner, the following four things:

> (1) That neither the taxpayer nor any person directly or indirectly under his control has, directly or indirectly, included the amount of the tax or any part thereof in the price of the commodity with respect to which it was imposed, or of any article processed from the commodity with respect to which it was imposed, or
>
> (2) Passed on any part of such amount to the vendee or to any other person in any manner, or
>
> (3) Included any part of such amount in the charge or fee for processing, and
>
> (4) That the price paid by the taxpayer for the commodity was not reduced by any part of the tax paid.

It is contended by the Government that this provision was put in the Act by Congress on the assumption that, generally speaking, the taxes imposed by the Act would be, in whole or in part, shifted by the processors to the farmer or to the purchaser of the processed article, and that to permit a processor who had in fact passed on the tax to recover it back would result in unjust enrichment of such

*Printed in Appendix A.

processor. The fact is, however, that the plain and unambiguous language of Sec. 21(d) reflects a purpose to *unjustly enrich the Government* rather than to prevent unjust enrichment of a taxpayer. The language is plain—"no recovery * * * shall be * * * allowed of * * * *any* amount of *any* tax, penalty, or interest * * *" unless the taxpayer proves that he did not pass on "*any part* of such amount" to the vendee or to any other person in any manner, and that he did not reduce the price paid for the article to be processed "by *any part* of such amount." Thus, so far as recovery of any tax paid is concerned, the processor who has passed on 1% of the tax and himself absorbed 99% of the tax, and can prove it, is entitled to recover exactly the same amount of the tax paid by him as the processor who has passed on the entire amount of the tax, to wit, nothing. Furthermore, there is no provision for the recovery by farmers or consumers of any part of the tax actually borne by them even if they were able to prove the fact. Thus, if the tax is collected and the law later be held unconstitutional, the Government is unjustly enriched by the total amount of all the processing taxes paid in excess of those amounts which the processors can prove were *wholly* borne by them. This is true entirely apart from any question of the ability of processors to factually prove whether they have passed on all or any part of the tax.

Turning now to the possibility of making the proof required by the statute as a condition prece-

dent to a return of the tax, we find that Congress has enacted into law an economic *theory* which has been the subject of acrimonious debate among scholars for more than a century. Despite all this study of the question of whether a tax, such as is here involved, is borne by the taxpayer or is pased on by him to others, no one has yet been able to make *factual* proof or disproof of the theory. The theory is supported only by arbitrary assumptions, hypotheses insusceptible of proof, debatable inferences from observed phenomena and the like, and the amount of verified knowledge with reference to the question has been recently characterized as "disappointingly slight." *XIV Encyclopedia of the Social Sciences* 537. Further, the conclusions reached with reference to any particular tax by application of any of the theories apply only to the long run, and not to short periods, and even then only the broad effect and not any specific effect of the tax is estimated. The debatable character of the theory as well as the impossibility of proving or disproving it in a court of law is illustrated by the excerpts from leading textbooks on economics contained in Appendix E. In this appendix there is also included quotations from official publications of the Government clearly indicating the impossibility of proving where the ultimate burden of tax on any given transaction actually falls.

The impossibility of making the proof required by Sec. 21(d) of the Act, as amended, becomes even more apparent when viewed in light of the particu-

lar cases before the court. First, it is to be observed that the tax here is not measured by the price at which the product is purchased or sold, but, on the contrary, bears no mathematical relation to those figures whatever. It is based solely on the number of units of rice passing through the particular mill regardless of the varying prices for which the rice is bought and sold. It becomes a part of the miller's expenses of operation just as does his income tax, franchise tax, insurance, salaries, general overhead, etc. It becomes inseparably commingled with all other costs of doing business and is no more capable of separate consideration to determine its effect on the purchase price or the sale price of the article processed than would be any other item of operating expense. The price which the miller pays to the farmer for rough rice and the price at which he sells the clean rice and rice products processed from it is not controlled by the miller's cost of doing business (and the cost of doing the business is, of course, not the same for all millers) but is fixed and controlled by multifold and complex economic factors both tangible and intangible. The market on which the miller buys, as well as the market on which he sells after processing the product, as is the case with processors of wheat, corn, hogs, etc., fluctuates from day to day and there is no way for him to know, much less prove, why he has to pay $3.20 a barrel for rough rice one week and has only to pay $2.25 per barrel for the same type and grade of rough rice the next week. He is equally helpless to prove why

it is that he is able to sell clean rice for only $4.10 per pocket (100 pounds) one week, while the next week he is able to get $5.05. Not only is the rice market presently affected by the operation of what might be termed "normal" economic factors, but it is likewise influenced by the continual efforts of the present Administration to artificially control as much as possible the entire economic structure of the country. Despite the operation of these complex economic factors upon the price the miller pays for rough rice, the miller is required, as a condition precedent to the recovery of the tax paid by him, to prove that the price was not lowered *because* of the tax, and must also prove that, when he sold the clean rice and rice products processed from it, the price was not increased *because* of the tax despite the fact that the market on which he sold was likewise affected by these various economic factors. He must therefore prove that the price paid by him for rough rice was not lowered and the price received by him for clean rice and rice products was not raised because of the influence of *all or any of the other factors involved,* however impalpable. In short, he must prove *what the market would have been had there been no tax.* That the making of such proof "is a problem that no human ingenuity could solve" was held by this court in *International Harvester Company v. Kentucky* (1914), 234 U. S. 216, 223, where it was further said that:

> "The reason is not the general uncertainties of a jury trial, but that the elements necessary

> to determine the imaginary ideal are uncertain both in nature and degree of effect to the acutest commercial mind. The very community, the intensity of whose wish relatively to its other competing desires determines the price that it would give, has to be supposed differently organized and subject to other influences than those under which it acts. * * *
>
> "* * * To compel them to guess on peril of indictment what the community would have given for them if the continually changing conditions were other than they are, to an uncertain extent; to divine prophetically what the reaction of only partially determinate facts would be upon the imaginations and desires of purchasers, is to exact gifts that mankind does not possess."

An analogous situation arises where a trademark has been infringed and the question arises as to how much of the sales price received by the infringer is attributable to the use of the trademark and how much to the intrinsic value of the object sold. In *Hamilton Shoe Company v. Wolf Bros.* (1916), 240 U. S. 251, 260, this court held that in such a case it would, in the very nature of things, be impossible to ascertain to what extent the infringer could have effected sales and at what prices except for the use of the trademark. The same principle is applicable here—it is inherently impossible, in the circumstances of this case, for petitioners, or any other rice miller, to ascertain or prove to what extent they could have "effected sales and at what

prices" except for the existence of the processing tax.

The situation involved in these cases is many times more complex than that in the case just referred to. The manner in which the rice milling business is conducted is summarized in the "Statement of the Case," *ante,* pp. 3-6, and is set out in great detail in the record. (R. 16-21, 60-75.) As is there explained, the miller is unable to accurately tell whether he has made a profit or a loss with regard to any given lot of rice. However, the tax is levied upon each lot of rice, based upon its weight at the time it reaches the mill, and in order to recover the tax paid on such rice, under the provisions of Sec. 21(d), the miller must prove that he did not "pass on" the tax with respect to that *particular lot of rice.* Since he cannot even determine whether he made a profit or a loss on the particular transaction, it is manifestly impossible for him to know, much less prove, whether he has passed on the tax. However, even if he were able to prove exactly the amount of profit he made on each transaction, he would still have proved nothing but that. For all that he, or anyone else, could know, he might have been able to sell the particular lot of rice for exactly the same price, even if there had been no tax, and he might have been able to purchase it for exactly the same price had there been no tax. On the face of it such matters are incapable of proof or even a sound guess.*

*The administrative difficulties of handling the claims for refunds even if proof could in some manner be made would be practically insuperable. It would be necessary to trace through from farmer to purchaser each one of the many millions of units of farm products processed throughout the United States. Even with a tremendous organization the task of examining and determining the facts with reference to each particular unit would probably run well into the next century.

In still another particular Sec. 21(d) fails to provide any ultimate remedy for the *judicial determination* of petitioners' constitutional rights. In any proceeding in court involving the tax sought to be recovered the court is, by this section, limited to the record made before the Commissioner, and petitioners may introduce no new or different evidence, and are likewise deprived of their right to a trial by a jury. Thus, instead of a judicial review of petitioners' constitutional rights, the Act substitutes a review by a single administrative agent of the Government. *Crowell v. Benson* (1932), 285 U. S. 22, 56.

To argue this point further would be to labor the obvious, and it is necessary only to notice one or two further matters. It is suggested that, since conversion factors have been fixed by the Secretary of the Treasury for use in determining the amount of refunds (drawbacks) to be made to millers with respect to articles processed from rice which are exported or sold to charitable organizations and the like, petitoners should be able to prove whether they have passed on the tax. (Brief in Opposition, p. 12.) This evidences a misconception of the purpose of these conversion factors. The Act provides that, when clean rice is exported or sold to certain charitable organizations, the processing tax paid on that particular rice shall be refunded to the miller. The tax, however, is computed on the amount of rough rice processed, being 1c per pound of rough rice milled. One pound of rough rice, however, does

not yield one pound of clean rice, there being a certain amount of loss by way of by-products and otherwise. Since the refund or drawback to the miller is based on the weight of the *clean* rice exported or sold, it is necessary to set up some method of determining how much tax was paid on the processing of that particular clean rice. Different lots of rough rice will turn out different proportions of clean rice, depending upon many factors. The Secretary of the Treasury, therefore, in promulgating these conversion factors, has simply stated on what basis the United States will make these refunds or drawbacks. The conversion factors are simply figures to be used, for the purpose of drawbacks, in determining how much rough rice was theoretically processed to obtain the amount of clean rice exported or sold. When this amount of rough rice is determined by the use of these arbitrary conversion factors, the Secretary of the Treasury makes the refund to the miller on the basis of the result obtained by this calculation. These arbitrary percentage figures promulgated by the Secretary of the Treasury, called "conversion factors," therefore have nothing whatever to do with the question of the passing on of a particular tax, and, if they prove anything at all, they prove only that it is impossible to apportion the tax on a given lot of rough rice among the varying grades of clean rice, and the rice products processed therefrom, except by the use of arbitrary figures. The reference to *United States v. Jefferson Electric Manufacturing Company* (1934), 291 U. S. 386, 402, is

equally inappropriate. The tax involved in that, and related cases, was a tax upon the *sale* of a definite, determinable object, and amounted to 5% of the price for which the object was sold, which tax was shown on the face of the invoice paid by the purchaser. The tax was not upon the manufacture or the manufacture and sale. *Indian Motorcycle Company v. United States* (1931), 283 U. S. 570, 574. An examination of the records and briefs in the *Jefferson Electric Company case,* and related cases, reveals that nowhere was any contention made that the proof required could not be made. The complaint was that the remedy was changed after the accrual of the right to recover the tax in such manner that the taxpayer could not recover the tax paid unless he had not collected the tax from his vendee or gave bond that in such case he would return the amount of the tax so collected to the vendee. In the *Jefferson Electric Company case* the taxpayer was, in effect, simply acting as the collecting agent for the Government of a tax which was intended by Congress to be borne by the vendee and the vendee alone. That case has absolutely no bearing on the present cases.

The Government also contends that *Burnet v. Houston* (1931), 283 U. S. 223, is conclusive that the inadequacy of these petitioners' remedy at law is simply a misfortune which must be borne by them. That case involved the inability of a single taxpayer to make proof of a material fact necessary to be established to procure an income tax refund. The stat-

ute involved did not establish any burden of proof inherently impossible of being met, nor did it involve the inability of an entire class of taxpayers, because of the nature of their business, to make the proof required. It is simply not in point.

The Government, relying on *United States v. Jefferson Electric Company, supra,* asserts that the granting of injunctions in these cases would result in unjust enrichment of petitioners. The Act involved in that case permitted the recovery of the tax by the person who actually paid it. If the taxpayer failed to prove that he had not collected the tax from the purchaser of the article involved, he could nevertheless procure a refund of the tax by giving a bond conditioned that he would pay the money over to the purchaser who had actually paid. As has already been pointed out, there is no such provision in the present Act, and the denial of the injunctions would necessarily result in unjust enrichment of the Government if the Act were to be held unconstitutional. The astounding proposition that the Government should take and keep *all of the tax* simply because of the *possibility* that someone other than these petitioners might have, to some undisclosed extent, borne the ultimate economic burden of the tax is contrary both to law and good morals. *Bull v. United States* (1935), 295 U. S. 247, 261. It is to be remembered that petitioners here are not seeking to recover money in the hands of the Government, as was the taxpayer in the *Jefferson Electric Company case,* but they are seeking to pre-

vent the Government from taking from them by forcible process moneys to which petitioners say the Government is not entitled. In such a situation the doctrine of unjust enrichment would in any event have no application.

These matters aside, however, the complete answer to this contention of the Government is that it *assumes* that the taxes have been "passed on," a matter which petitioners confidently assert can neither be proved nor disproved.

Petitioners submit that on the face of the Act an impossible burden of proof has been placed upon petitioners. Petitioners further assert that even if this were not true, the courts below should have enjoined the collection of the tax until such time as the courts could make a finding upon the fact question of whether, under the peculiar conditions of the rice industry, the proof could be made. The motion to dismiss which was sustained by the District Court admitted these allegations of petitioners' bills of complaint and under the circumstances the court was under the plain duty of preserving the *status quo* until such time as the facts upon which the petitioners' constitutional rights depended could be fully determined. *Ohio Oil Company v. Conway* (1929), 279 U. S. 813.

Besides the lack of any adequate remedy at law this case presents several other grounds for equitable relief which have been held sufficient by this Honorable Court to support an injunction against the collection of a tax:

1. Multiplicity of suits. (R. 23.) *Wilson v. Illinois Southern Railroad* (1924), 263 U. S. 574; *Raymond v. Chicago Union Traction Company* (1907), 207 U. S. 20.

2. Congress has made no appropriation to repay any of these taxes if illegally collected, even if an adequate remedy at law were available, and in view of the tremendous amount involved, it is improbable that any such appropriation will be made. (R. 24.) *Stewart Dry Goods Company v. Lewis* (1932), 287 U. S. 9.

3. The statute purporting to give the legal remedy has never been interpreted by the courts and for this reason, if for no other, petitioner's remedy at law cannot be said to be adequate. *Atlantic Coast Line v. Daughton* (1923), 262 U. S. 413. *cf. Union Pacific Railroad v. Weld County* (1917), 247 U. S. 282.

4. The existence of the heavy civil and criminal penalties provided by Section 19(b) of the Act.* (R. 15.) *Ex Parte Young* (1908), 209 U. S. 123, 146; *Wallace v. Hines* (1920), 253 U. S. 66.

In closing this section of the brief petitioners again challenge the Government to suggest *how* the proof required by Sec. 21(d) can be made, bearing in mind that petitioners would be required to establish the four elements "* * * by appropriate proof, like other elements of such a right or cause of action * * *." *United States v. Jefferson Electric Company, supra,* page 400.

*The applicable penalty provisions are copied in Appendix C hereto.

afforded to get it back even if the statute under which it was collected be later held unconstitutional. The right of a State to exclude foreign corporations from doing business within its borders is apparently as absolute and unqualified as the right of Congress to abolish the District Courts. Nevertheless, this court has held, *Fidelity & Deposit Co. v. Tafoya* (1926), 270 U. S. 426, that this "most absolute seeming" right was qualified, and in some circumstances could become wrong, and that the State could not impose an unconstitutional condition upon the foreign corporation coming into the State. The exercise of Congress' right to limit the equity jurisdiction of the lower Federal Courts in the granting of injunctions in tax cases such as the present would be, as in the case just cited, for the purpose of securing a result forbidden by the Constitution, *i. e.*, the deprivation of petitioners' property without due process of law. See also *Brinkerhoff-Farris Trust & Savings Company v. Hill* (1930), 281 U. S. 673, and *Graham & Foster v. Goodcell* (1931), 288 U. S. 409, 430, 431.

In the preceding discussion the statutes have been considered as a limitation by Congress on the *Federal* Courts. However, no such limitation appears in the acts and by their plain terms they apply to *"any"* court which would, of course, include a State Court. Whatever the authority of Congress may be with respect to abolishing Federal Courts, it certainly could not abolish State Courts, and its authority over the jurisdiction of State Courts must be limit-

ed to that which is necessary for the carrying out of its delegated powers. Doubtless, when a taxpayer is afforded a full and adequate remedy for the recovery at law of a Federal tax illegally exacted, Congress could forbid State Courts, as well as Federal Courts, from enjoining the collection of such taxes. However, petitioners submit that Congress may not constitutionally forbid State Courts to grant injunctions against the collection of Federal taxes in cases where the taxpayer is by statute deprived of the right to recover the tax in the event it be held to have been assessed under an unconstitutional statute. The statutes in question applying to *all* courts in plain and unequivocal language, may not by interpretation be held to apply only to Federal Courts for the purpose of, if possible, saving their constitutionality. It cannot be presumed that Congress would have passed these statutes in like terms applicable only to Federal Courts, since, if the State courts were free to grant injunctions, the whole purpose of the statutes would be defeated.

There is still another reason why these statutes if construed to absolutely and in all cases forbid injunctions are unconstitutional. The Constitution, Article III, Sec. 1, vests the judicial power of the United States in one Supreme Court, and such inferior courts as the Congress may from time to time ordain and establish. By Sec. 2 of Article III this judicial power extends to *all* cases in law and *equity* arising under the Constitution and laws of the United States. Congress having established the

District Courts and the Circuit Courts of Appeals and having conferred upon them *jurisdiction* over *all* cases in law and in equity arising under the Constitution and laws of the United States [Sec. 41(1), Title 28, U. S. C.], these courts at once become vested with the *judicial power* necessary to carry out the jurisdiction conferred by Congress. This *judicial power*, as distinguished from *jurisdiction*, springs from the Constitution, and not from the act of Congress. These suits arise under the Constitution and laws of the United States, and therefore come within the jurisdiction of the District Courts as defined by Congress. The only way in which the *judicial power* of the courts could be exercised and vindicated in these cases is by the issuance of injunctions both to preserve the *status quo* until the final determination of the constitutionality of the Act could be made, and, when that determination is made, to make effective its decree of unconstitutionality. Courts have inherent power to issue injunctions to preserve their jurisdiction and make effective their decrees. *Julian v. Central Trust Company* (1904), 193 U. S. 93, 112. The statutes here involved which would forbid the issuance of injunctions in these cases therefore completely destroy one of the inherent powers of the courts. This Congress may not do. In *Michaelson v. United States* (1924); 266 U. S. 42, 64, 65, 66, this court said:

> *"If the statute now under review encroaches upon the equity jurisdiction intended by the Constitution, a grave constitutional question in*

respect of its validity would be presented; and it, therefore, becomes our duty, as this court has frequently said, to construe it 'if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon that score.'. Panama R. R. Co. v. Johnson, 264 U. S. 375.

"But it is contended that the statute materially interferes with the inherent power of the courts and is therefore invalid. That the power to punish for contempts is inherent in all courts, has been many times decided and may be regarded as settled law. It is essential to the administration of justice. *The courts of the United States, when called into existence and vested with jurisdiction over any subject, at once become possessed of the power.* So far as the inferior Federal Courts are concerned, however, it is not beyond the authority of Congress (*Ex parte Robinson,* 19 Wall. 505, 510-511; *Bessette v. W. B. Conkey Co.,* 194 U. S. 324, 326); *but the attributes which inhere in that power and are inseparable from it can neither be abrogated nor rendered practically inoperative.* That it may be regulated within limits not precisely defined may not be doubted. The statute now under review is of the latter character."

To uphold these statutes would be "* * * to sap the judicial power as it exists under the Federal Constitution * * *." *Crowell v. Benson* (1932), 285 U. S. 22, 57. *cf. Murray's Lessee et al. v. Hoboken Land & Improvement Company* (1855), 18 How. 272, 284.

If this section of the Act be interpreted as depriv-

ing the courts of all *jurisdiction* to hear any of a class of cases arising under the Constitution and laws of the United States it is probably unconstitutional for another reason. Under Sec. 2 of Article III of the Constitution there are enumerated the types of cases to which the judicial power *shall* extend. As to some cases, such as those in law and in equity, arising under the Constitution and laws of the United States, the word *"all"* is used, whereas with respect to other classes of cases, such as those between citizens of different states, the word *"all"* is omitted. This would indicate an intention that Congress could limit or destroy the jurisdiction of the District Courts with reference to the classes of cases not preceded by "all" and, conversely, that it could not completely take away the jurisdiction with reference to any class of cases preceded by the word "all." *Martin v. Hunter's Lessee* (1816), 1 Wheat. 304, 334. On this basis *Kline v. Burk* (1922), 260 U. S. 226, and the cases cited therein may be readily distinguished. This proposition, of course, assumes a duty imposed upon Congress by the Constitution to create courts with jurisdiction over those cases preceded by the word "all" in Sec. 2 of Art. III. Whatever might be the difficulties of the proposition if Congress had never established courts with jurisdiction over such cases, because of the lack of any judicial remedy to compel Congress to create such courts, no such difficulty now exists since those courts have been created and clothed with the jurisdiction intended by the Constitution.

It is submitted that having performed its duty pursuant to the clear intent of the Constitution the Congress cannot now, by a legislative act, set at naught the constitutional requirement.

POINT D.

If injunctions in these cases may be constitutionally forbidden by Congress, then the statutory provisions for the summary collection of the taxes are unconstitutional.

Under Secs. 115 to 131, Title 26, U. S. C., as amended,* which are incorporated in the present Act, the respondent is authorized to collect the taxes, upon non-payment, by the fixing of liens on all of petitioners' property or by the levying of distraints against petitioners' property, including bank accounts, etc. Thus, respondent is by statute authorized to forcibly and summarily collect these taxes, whether they be invalid or not, and petitioners are powerless to prevent it. The constitutional validity of this summary procedure for the collection of taxes has uniformly been upheld on the ground that the taxpayer had an adequate, though deferred, remedy for the ultimate judicial determination of his liability for the tax. In *Phillips v. Commissioner* (1931), 283 U. S. 589, 596, this court said:

> "Where only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, *if the opportunity given for the ultimate judicial determination of*

*Printed in Appendix B.

the liability is adequate. Springer v. United States, 102 U. S. 586, 593; Scottish Union & National Ins. Co. v. Bowland, 196 U. S. 611, 631."

Under the facts of these cases petitioners are deprived of all legal remedy to recover the tax collected, if it be held illegal, because of the impossible burden of proof petitioners would have to meet in such a suit, and, if R. S. §3224 and Sec. 21(a) be so construed, petitioners are deprived of the right to test the validity of the tax by a suit for an injunction. The result would be that petitioners would never have any opportunity to procure a judicial determination of the constitutional validity of the tax forcibly taken from them and forever retained by the Government. To permit the Government to summarily seize petitioners' property under these circumstances would be to deprive petitioners of their property without due process of law. See, in addition to the case cited, *Lipke v. Lederer* (1922), 259 U. S. 557, 562; *Carpenter v. Shaw* (1930), 280 U. S. 363, 369; *Ward v. Love County* (1920), 253 U. S. 17.

Neither R. S. §3224 nor Sec. 21(d) of the Act as amended purport to forbid the granting of injunctions against the use of summary proceedings for the collection of taxes. Such injunctions would not restrain the collection of the tax, which could of course be collected through the customary judicial process, but would simply restrain administrative officials of the Government from using certain methods to

effectuate collection. Petitioners submit that, even if they were not entitled to the full relief prayed for, they were and are entitled to the lesser relief of an injunction against the use of the summary procedure provided in Secs. 115 to 131, Title 26, U. S. C., for the collection of the taxes.

POINT E.

The Agricultural Adjustment Act, as amended, is unconstitutional.

In view of the extraordinarily full presentation of the constitutionality of the original Act which has been made to the court in No. 401, *United States of America v. Butler,* petitioners' argument here will be more generalized than would otherwise be the case. It will be demonstrated, however, that the amendments to the Act, instead of curing its constitutional defects, have simply emphasized them.

The broad constitutional question presented by these cases is whether our national government shall continue to be one of limited and delegated powers as is provided in the existing Constitution or whether, through a process of amendment-by-erosion of that document, there shall be substituted a supreme and all powerful Federal government with state lines important only for the purpose of permitting the use of vari-colored maps in geographies. Petitioners do not propose to argue the social or economic desirability of this centralization of power in the

Federal Government. They are concerned only with the methods used to achieve it.

(1) The Act is an attempt to regulate the price at which petitioners buy and sell rice in intrastate commerce.

(2) The Act is an attempt to control the production of agricultural commodities within the several States.

Since these two points are so intimately related they will be discussed together. The congressional declaration of policy contained in the Act (Sec. 2), in the light of which *every word* in the Act must be read, leaves no doubt that the *sole* purpose of the Act is to fix the prices which farmers are to receive for their products in purely *intrastate* sales transactions. So far as the declaration of this primary purpose is concerned not even the wording of the Act has been changed by the amendments of August 24, 1935. The means by which this object is to be attained are set out in Sec. 8 of the Act, as amended. This section, as amended, withdraws the authority granted by the same section in the original Act in reference to licenses, but continues in effect the direction to enter into contracts for the reduction in acreage and production of any basic agricultural commodity and for the making of rental or benefit payments in connection therewith. Under sub-section (3) the Secretary is authorized to make certain other payments out of available funds for the purpose of effectuating the policy of the Act. The

payments so authorized are plainly complementary to the rental or benefit payments and for the same ultimate purpose. In order to raise the revenue necessary to make the payments required to effectuate the purposes of the Act the Secretary is authorized to proclaim that the making of such payments will tend to effectuate the purposes of the Act with respect to a given commodity and thereafter a processing tax shall be in effect with respect to such commodity. (Sec. 9.) Under the provisions of Sec. 9(b) (6) the amount of the tax is always subject to being increased or decreased, including a decrease to zero, at the discretion of the Secretary. The genesis of the tax is the existence of a *price* for a given basic agricultural commodity less than that which the Secretary determines it ought to be under the provisions of Sec. 8 (1). There is therefore *no tax* unless there is a *price to be fixed.* Furthermore, according to the Government's own argument, there will be no payment, and therefore no tax, unless there is to be a reduction in the acreage and crop of the commodity involved (Br. p. 76*.) Just as the existence of the tax is dependent upon the regulation of price and production, the existence of regulation of price and production is dependent upon the existence of the tax. As aptly stated by the Government the regulatory features of the Act "* * * would have failed dismally had it not raised large amounts of revenue" (Br. p. 28). Not only is the congressional intent to regulate the prices paid

*All references to the brief relate to the brief for the United States in No. 401, *United States v. Butler et al.*, unless otherwise indicated.

in purely intrastate transactions, and to regulate the acreage and production of agricultural commodities within the several states, apparent from the face of the Act itself, but the Government's whole argument that the Act was soundly designed to promote the "general welfare" is based upon the proposition that such is its purpose and such has been the actual result. (Br. p. 179ff.) That these objects sought to be attained by the Act are beyond the power of Congress is no longer open to doubt. *Child Labor Tax Case* (1922), 259 U. S. 20; *Hammer v. Dagenhart* (1918), 247 U. S. 251; *Hill v. Wallace* (1922), 259 U. S. 44; *Schechter Poultry Corporation v. United States* (1935) 295 U. S. 495; *Butler, et al., v. United States* (C. C. A. 1st., 1935), 78 F. (2) 1.

The Government contends, however, that the sole purpose of the processing and floor-stock taxes levied in the Agricultural Adjustment Act is to raise revenue and that the provisions of the Act itself, the manner of its enactment, and the practical operation of the taxes thereunder all compel this conclusion. In support of this contention the Government asks that the revenue features of the Act be read separate and apart from the regulatory features. In order to do this it would first be necessary to entirely rewrite the Act since the revenue features and the regulatory features are so inseparably interwoven in the very language itself that nothing intelligible could result from striking out all words in the Act referring to matters other than the levy-

ing of the tax. As has been pointed out above the taxes assessed and the regulations provided for are mutually interdependent both from the terms of the Act itself and its practical operation and effect. This Court has held that a single taxing statute may not be declared unconstitutional by considering its provisions and effects separate and apart from other related statutes forming a complete system. *Gregg Dyeing Company v. Query* (1932), 286 U. S. 472, 479. Conversely the constitutionality of one portion of a single act may not be upheld by refusing to consider the other provisions of the act to which it is inseparably related.

If this contention of the Government be regarded as a claim that the taxing features of the Act are separable from the remainder of it the result is the same. Exactly in point is *Williams v. Standard Oil Company* (1928), 278 U. S. 235, which involved a statute of the State of Tennessee seeking to regulate the price of gasoline and in connection therewith imposing a permit tax. The tax thus imposed was constituted as a special fund to defray the expenses of the administration of the law. This taxing feature as well as other regulatory features of the law was sought to be upheld despite the unconstitutionality of the objective of the Act on the ground that the Act contained a separability clause. With respect to this contention this Court said:

> "The bare recital of these details shows conclusively that they are mere adjuncts of the

price-fixing provisions of the law or mere aids to their effective execution."

This language is equally applicable to the Act under consideration. The taxes assessed are mere adjuncts to the price fixing and crop and acreage fixing features of the Act. When there is no necessity for price fixing there is no tax, thus demonstrating beyond any reasonable doubt that Congress did not intend that there should be a tax unless the fixing of prices of basic agricultural commodities through reduction in acreage and production of crops was to be effectuated. The reason for the tax, and the use to which moneys raised by it are put, is neither changed nor obscured by the verbal device of translating the words "* * * the proceeds derived from all taxes imposed under this title are hereby appropriated * * *" to "* * * *a sum equal to* the proceeds derived from all taxes imposed under this title is hereby appropriated." It is simply illustrative of the excessive reliance of present day legislative draftsmen upon word-magic, and a studied indifference to the admonitions of this Court that it is concerned with substance and not with form. It is but another example to be added to the body of learning on "Constitution-Avoidance" now being built up in Washington.

A further argument made in support of the Act is that the citizen, as a matter of public policy, should not be permitted to question the uses to which the moneys collected from him are put, citing

Massachusetts v. Mellon (1923), 262 U. S. 447. The case cited is, of course, no authority whatever for the proposition asserted. This court simply held there that the mere status of being a Federal taxpayer, contributing an infinitesimal amount along with millions of others to the United States Treasury, was an insufficient basis for the maintenance of a suit to test the constitutionality of a congressional appropriation in the absence of a showing that "* * * he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally." Frothingham's contention in that case was simply that she would, to some undefinable extent, suffer damages by reason of a possible future increase in taxes because of the appropriation having been made. In the instant cases the injury is immediate, direct, and perceptible. The extent of the injury may be fixed with exactness and the *cause* of the injury is determinable with equal certainty since without the unlawful appropriation there would be no tax. The basic purpose of the Act is the regulation of agriculture, and the processors, and they alone, are being compelled to foot the bill. It is no answer to say that Congress might possibly change the appropriation at some future date. The change made by the amendment of August 24, 1935, in the uses to which the taxes collected might be put, in no wise changed the ultimate purpose for which the moneys were appropriated. All of

the taxes collected under the Act were, and still are, appropriated for expenditure for the purpose of achieving the policy of the Act, and for no other purpose. It would be as improper for this Court to hold the Act constitutional on the basis of what might occur in the future as it would be for the Court to hold an act unconstitutional on the same basis. *cf. Chastleton Corp. v. Sinclair* (1924), 264 U. S. 543, and cases there cited. Furthermore this whole argument of the Government overlooks the fact that what is here involved is the constitutionality of an act of Congress making an appropriation inseparably connected with the levying of a tax. What may in the future become of the money collected is not here involved. What is involved is the validity of the appropriation presently made. This Court long ago indicated in *Field v. Clark* (1892), 143 U. S. 649, 695, that whenever the appropriation of moneys procured from particular taxes was so inseparably connected with the provisions of the act levying the tax this Court would consider the constitutional validity of the appropriation. We submit that the Court should do so here.

Having attempted, on these technical grounds, to avoid judicial scrutiny of the purpose and effect of the Act, the government then argues that there is really no regulation at all,* and nothing more in-

*The actual purpose and effect of the Act is nowhere better illustrated than in the efforts of the Federal government to control prices in the rice industry during the past two years. Originally the control was attempted by direct means (licensing and marketing agreements) which methods eventually failed and it was then, and only then, that Congress attempted to achieve the regulation by indirect means through the processing tax. For the information of the court a summary history of Federal attempts at regulation in the rice industry is set out in Appendix F.

volved than the making of simple, private, voluntary contracts between the Secretary and individual producers of agricultural commodities, which contracts he could have made in any event even without the enactment of the statute. (Br. p. 266.) We incline to doubt the validity of contracts authorizing the expenditure of more than a billion dollars of Government funds entered into by the Secretary of Agriculture without congressional authority. That is beside the point, however, since the contracts made by him are pursuant to the legislative command of Congress. The fact that the arrangements between the Secretary of Agriculture and the individual farmers by which the latter reduce their acreage and the former makes benefit payments to them out of the taxes collected from processors are characterized in the Act as "voluntary" does not make the Act in purpose and effect any the less a regulation of agriculture within the state. *cf. Schechter Poultry Corporation v. U. S., supra,* p. 529. The asserted purpose of the Act was to achieve that result and the Government proudly asserts that such result has in fact been accomplished. (Br. p. 211.) The arrangements are made by virtue of, and under authority of, the law, and it is idle to say that the act of the farmer in reducing his acreage pursuant to the contract with the Secretary of Agriculture is voluntary when the farmer knows that if he does not execute such agreement he is subjected to the penalty of having to sell his commodity at the same price at which other farmers

sell it minus the substantial amount received by the other farmers by way of benefit payments. Furthermore without the tax provisions in the Act (which are certainly not voluntary) the enormous benefit funds with which to coerce the farmers into making the "voluntary" agreements would not be available, and the result sought to be achieved by Congress, to-wit, the regulation of agriculture within the several states, could not be accomplished. (Br. p. 28.) What is undeniably clear is that the taxing power is sought to be used in this Act, as it was in the *Child Labor Tax Case, supra,* for the purpose of regulating matters solely of state concern. The real basis of the decision in the *Child Labor Tax Case, supra,* was that the Act showed on its face an attempt by the Federal Government to regulate a "* * * business wholly within the police power of the state. * * *" *Hill v. Wallace, supra,* p. 67. It is no less a perversion of the taxing power to use the *benefits* of the tax to purchase the forbidden regulation than it is to use the *detriments* of the tax to compel submission to the forbidden regulation. The argument that there is no encroachment upon the sovereignity of the several states involved because any state or states could at any time pass a law which would abolish the effects of the contracts entered into between the Government and the producers ignores the basic question involved. The question is solely one of *power.* Either the Federal Government has authority to cause the reduction of production and acreage of basic agricultural com-

modities within the several states or it has not. If it has the power, then any action it takes toward this end is supreme and the states could do nothing to impair it. On the other hand, if the power is lacking, the Federal Government can do nothing to effectuate it regardless of what the states might or might not be able to do with regard to the matter involved. If, after the Federal government had made the necessary arrangements for the reduction of acreage and production, a particular state could, by passing a law, set it all aside, the state's authority to do so could only be based on the *lack of power* of the Federal Government to do the things it had done. The contracts it had executed would not be merely voidable—they would be utterly void. They would be of no more force or effect than the judgment of a court which showed on its face an entire absence of jurisdiction over the subject-matter. Reduced to its lowest terms, the argument of the Government simply is that the right of the Federal Government to do the things authorized by this Act should be upheld because in any event such actions would be utterly void from the beginning. Powers not granted to the Federal Government by the Constitution may not be exerted by it because of some supposed inability of the states to act in the premises, nor by the consent of the state or its citizens expressed in any manner other than that provided in Article V of the Constitution. This Court said in *Kansas v. Colorado* (1907), 206 U. S. 46, 89:

"But the proposition that there are legislative powers affecting the Nation as a whole which belong to, although not expresed in the grant of powers, is in direct conflict with the doctrine that this is a government of enumerated powers. That this is such a government clearly appears from the Constitution, independently of the Amendments, for otherwise there would be an instrument granting certain specified things made operative to grant other and distinct things. This natural construction of the original body of the Constitution is made absolutely certain by the Tenth Amendment. *This amendment, which was seemingly adopted with prescience of just such contention as the present, disclosed the widespread fear that the National Government might, under the pressure of a supposed general welfare, attempt to exercise powers which had not been granted.* With equal determination the framers intended that no such assumption should ever find justification in the organic act, and that if in the future further powers seemed necessary, *they should be granted by the people in the manner they had provided for amending that act.*"

The Tenth Amendment was not a grant to the states but simply a more specific limitation upon the power of the Federal government to make doubly sure that its activity should be confined to those fields in which power had been specifically granted to it.

There is still another reason why the Government's argument here is fallacious. In the first place, as a practical matter, a state could not by legislative fiat change the number of acres under

cultivation or the amount of the commodity being cultivated at any given time under the provisions of these contracts. It would simply be a physical impossibility. The states, however, could not consistently with the Federal Constitution, and most state constitutions, itself regulate the price at which basic agricultural commodities are sold or the number of acres or amount of crops planted. *Williams v. Standard Oil Company, supra,* and cases there cited. Thus, whatever regulation is accomplished within the state by virtue of the Act is beyond the power of the state to change. Viewed realistically, the contention of the Government here, if upheld, would inevitably make possible the regulation within the several states of any business the Federal Government might choose to select. This could be done despite the fact that the Federal Government would be acting within a field in which it has not been delegated power to act and despite the prohibitions of the Fifth and Fourteenth Amendments which forbid governmental control of businesses not affected with a public interest. If the Federal Government may, with money raised by taxation, purchase regulation of agriculture, no reason is perceived why it may not do the same thing with reference to manufacturing, mining, merchandising, etc.

It is submitted that these so-called "voluntary" contracts, and the regulation of agriculture within the several states which results from their execution, are effective *only* by virtue of the Act of Congress

here assailed and therefore the regulation is not accomplished, as the Government asserts, by independent agreements between the Secretary of Agriculture and individual farmers, since such agreements would be completely ineffective if there were no Agricultural Adjustment Act. The regulation has its source in the Act, and there alone. It is further submitted that to uphold the contention of the Government here would mean not only the nullification of important specific provisions of both state and Federal constitutions but would also mean a change in the very form of our Government.

(3) The taxes are not levied for the general welfare or for a public purpose and deprive petitioners of their property without due process of law, contrary to the Fifth Amendment.

The tax involved here is not a general tax but one the impact of which falls solely on a certain class of citizens—processors of basic farm commodities. The proceeds of these taxes are then appropriated for the benefit of another class of citizens—the producers of basic agricultural commodities. A plainer case of taking A's property and giving it to B can scarcely be imagined. Such a perversion of the taxing power was condemned by this court in no uncertain terms in *Loan Association v. Topeka* (1874), 20 Wall. 655. See also *United States ex rel. Miles Planting & Manufacturing Company v. Carlisle,* 5 App. D. C. 138; *Parkersburg v. Brown* (1882), 106 U. S. 487; *Cole v. LaGrange* (1885), 113 U. S. 1; *Railroad Retirement Board v. Alton Railroad Com-*

pany (1935), 295 U. S. 330, 350. Such a tax is plainly not for a public purpose and there is nothing to the contrary in *United States v. Realty Company* (1896), 163 U. S. 427. That case involved nothing more than the question whether an obligation arising out of acts long since completed could be considered a "debt" of the United States even though the Act of Congress under which the acts were done was unconstitutional. There was not there involved, as here, acts continuing to be done by virtue of the statute assailed as unconstitutional.

The government's main reliance here is upon the so-called "general welfare" clause of the Constitution and, though the broadest interpretation of that clause is not sought to be supported, the one which is asserted by the government as being correct (the so-called Hamiltonian theory) falls little short of this broadest interpretation which would authorize exertion of Federal power for the "general welfare" by means other than taxation. Conceding that the Federal government cannot legislate generally for the "general welfare" it is asserted that it may nevertheless use its taxing power for that purpose without being limited to the fields of authority delegated to the Federal government by express provisions of the Constitution. Since there is practically no limit to the use of the taxing power in the manner claimed to be proper by the government there would be, if the government's theory is accepted, practically no limit to the legislation which Congress could enact under the guise of a

supposed promotion of the public welfare. This court, speaking of the Tenth Amendment in *Kansas v. Colorado, supra,* p. 90, said:

> "This amendment, which was seemingly adopted with prescience of just such contention as the present, disclosed the widespread fear that the National Government might, *under the pressure of a supposed general welfare, attempt to exercise powers which had not been granted.*"

The plain inference of this quotation is that Congress could never constitutionally legislate with respect to the supposed "general welfare" except within those fields where power has been specifically granted to it by the Constitution. And in *Veazie Bank v. Fenno* (1869), 8 Wall. 533, 541, this court declared itself in unmistakable language as opposed to the government's present interpretation:

> "There are, indeed, certain virtual limitations, arising from the principles of the Constitution itself. It would undoubtedly be an abuse of the power if so exercised as to impair the separate existence and independent self-government of the States, *or if exercised for ends inconsistent with the limited grants of power in the Constitution.*"

The court here was speaking of the Federal power to tax and its language was quoted with approval in the *Child Labor Tax Case, supra,* page 41. To follow the government's interpretation would be to do violence to the whole theory and structure of our Federal Constitution which is based upon a Federal government of delegated powers and separate State

governments retaining all the powers not specifically granted to the Federal government. Only by acceptance of the so-called Madisonian theory of interpretation can a result consistent with this division of powers between the Federal and State governments be obtained.

However, even if it be assumed that in taxing for the "general welfare" Congress is not limited to those fields in which power has been delegated to it the Act here in question nevertheless is plainly not for the "general welfare" within any proper interpretation of that clause of the Constitution. The general welfare referred to in the Constitution is that "of the United States" and not that of any particular State or group of States within the Union. A great mass of statistical data has been brought together by the government to show the sorry plight in which the farmers found themselves during, and before, the depression years and that this weakness in farm income "contributed materially" to the general depression after 1929. (Br. p. 183.) It is then argued that it was "reasonable" and "logical" (Br. p. 217) to expect that an increase in the farmers' income would aid in bringing about recovery in other industries. In short, the argument is that since giving the farmer more money to spend would, to some undisclosed extent, aid recovery in other industries, an Act of Congress designed to give this additional money to the farmer is for the "general welfare." This same sort of argument was made in *Loan Association v. Topeka, supra,* and was

flatly rejected by this Honorable Court. Furthermore exactly the same argument could be made to support a congressional Act designed to increase the wages of workers in the capital goods industries, to increase the salaries of the so-called "white-collar" classes, to increase the wages of railroad workers, etc. For example, an argument, amply supported by government statistics, can be made that the farm surpluses referred to by the government were not the result of overproduction but of the inability of the public to buy even at depressed prices. Even in the banner year of 1929 the production of food products in the United States was 18,000,000,000 pounds short of enough to furnish a moderate diet for the people of this country.* Under these circumstances it would seem that a more direct contribution to the "general welfare" would have been for Congress to grant a bounty to all those unable to purchase sufficient food for a moderate diet and thus relieve the farmer and the consumer at one fell swoop. Or, less directly, the government might have granted a subsidy to the capital goods industries where the vast majority of our unemployment has been during the past few years with the result that workers in those industries would again be enabled to buy farm products and thus aid both the farmer and the worker.

The rehabilitation of the agricultural industry, like the rehabilitation of any other basic industry,

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*"Is the United States Slowly Starving?" by Charles W. Burkett. *Liberty*, April 13, 1935, p. 7.

may well contribute, to some undefinable extent, to the improvement of the general economic situation, but that does not mean that the rehabilitation of the agricultural industry, or any other industry, is for the "general welfare *of the United States.*" It was certainly not intended that Congress could use the taxing power for any purpose which might *tend* to "promote the public welfare of the United States" any more than the Congress is empowered under its authority over interstate commerce to pass any law which would *tend* to promote, impede, or affect that commerce. *cf. Schechter Poultry Corp. v. United States, supra,* page 544. It is submitted that, even accepting the government's theory, the promotion of the "public welfare" sought to be provided must be *direct* and not merely indirect or consequential. The only welfare which is *directly* affected by the Act is the welfare of a limited group of citizens living within a limited part of the United States. The Congress might just as well have selected any other group to receive the *direct* benefit and presumably the farmers were picked because of their greater ability to make their needs known. The benefit to the public at large is purely incidental to the direct benefit to the farmer and is as indirect, diffused, and impalpable as was the injury asserted by Frothingham in *Massachusetts v. Mellon, supra.* It is doubtful if even a general delegation of power to legislate for the "general welfare" would be interpreted to authorize legislation limited in its direct effects to a single class of citizens when its

effect upon the public generally would be remote and consequential. Here again the ultimate consequence of the acceptance of the argument of the government is that the whole theory of our government, accepted for more than a century, must be cast overboard.

There remains here to be noted the contention of the government that the right of Congress to take money from A and give it to B by means of taxation is supported by cases holding that the mere fact that the result of a tax is to confer a benefit on a certain class does not invalidate the tax. In all of the cases cited by the government, however, the effect upon the benefited class was merely incidental and consequential, and not direct, as is the case here. Cases sustaining the tariff are also cited as analogous and the tax here assailed even referred to as a "farmers' tariff." The situation with respect to the tariff is entirely different from that involved here and is in fact no different, constitutionally speaking, from the other tax cases referred to by the government. In all of them the tax collected went into the general funds of the United States without any appropriation of them being made in the Act imposing the tax or tariff. They were used for the general purposes of government and not appropriated for payment over to a single class of citizens. All that this court held in those cases was that when the Federal government exercised its unquestioned constitutional power to tax, or to impose a tariff, such taxes or tariff were not rendered unconstitutional because of

any ulterior motive Congress may have had in enacting them or because of any incidental benefit which might result to a certain class because of their imposition. Such decisions lend no support to the direct taking and giving involved in the present Act. Here the benefit is not incidental to the tax but the benefit is the primary purpose of the Act so that legally the tax is merely incidental to the benefit.

(4) The Act, as amended, contains an unconstitutional delegation of legislative power to the Secretary of Agriculture.

It is apparent from the face of the amendment of August 24, 1935, that its principal purpose was to attempt to cure the unconstitutional delegation of legislative power contained in the original Act. Upon analysis, however, it appears that the amendment actually did no more than to obscure the real powers conferred with a cloud of words and in addition there is now required greater mental and optical agility to locate and determine those powers than was the case in the original Act.

Now, as heretofore, a processing tax with respect to any given commodity comes into effect for one marketing year only when the Secretary of Agriculture determines that rental or benefit payments are to be made with respect to such commodity and such tax terminates at the end of the current marketing year whenever the Secretary proclaims that the rental or benefit payments are to be discontinued with respect to such commodity. (Sec. 9(a)). The

rate of the tax is still to be fixed in accordance with the difference between the current average farm price for the commodity and the fair exchange value of the commodity, except that the Secretary may now add such percentage of such difference, not to exceed 20%, as he may determine will result in the collection of an amount of tax sufficient to pay the credits or refunds which he estimates will be made with respect to the commodity during the current marketing year as well as the amount of the tax which he estimates would have been collected on all processings of such commodity which are exempt from the tax because done by or for a state or a political subdivision thereof. (Sec. 9(b)(1)). The "fair exchange value" of the commodity is still defined as being the price therefor that will give the commodity the same purchasing power with respect to articles farmers buy as such commodity had during the base period and it is still provided that such fair exchange value as well as the current average farm price shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture. Under the amendment, however, the fair exchange value is required to reflect interest payments per acre on farm indebtedness and tax payments per acre on farm real estate in the case of commodities where the base period is the pre-war period.

The Secretary still has unlimited discretion, whenever he is of the opinion that it is necessary to effectuate the policy of the Act, to suspend the tax

or require a refund, whichever he thinks would be preferable, or to exempt processors of any given commodity from payment of the tax (Sec. 15). He likewise has the same unlimited discretion, whenever he thinks it necessary for the accomplishment of the purposes of the Act, to exclude from the tax, for any length of time he deems desirable, any commodity or classification, type, or grade thereof (Sec. 11).

The Secretary is empowered under the provisions of Sec. 9(b)(6) to adjust the rate of the tax by an increase or a decrease (including a decrease to zero) under the following circumstances:

(1) Whenever the Secretary is of the opinion that the tax is having the effect of depressing the farm price of a given commodity or causing a surplus of such commodity to be accumulated due to a reduction in the domestic consumption of the commodity he may reduce the tax (including a reduction to zero) in such amount as he believes will rectify the situation.

(2) If the average farm price is within a certain percentage, more or less, for twelve successive months the tax is to be adjusted to a fixed percentage of the fair exchange value of the commodity.

(3) "In accordance with the formulae, standards, and requirements prescribed in this title, any rate of tax prescribed in paragraphs (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6) shall be increased."

In the case of certain commodities (wheat, cotton, field corn, hogs, peanuts, tobacco, paper, and jute

and to a limited extent sugar cane and sugar beets) the rate of the tax is fixed at the rate prescribed by the regulations of the Secretary of Agriculture in effect on the date of the adoption of the amendment during the period from such date to December 31, 1937 (Sec. 9(b)(2)). In the case of rice the tax rate is fixed at 1c per pound of rough rice for the period from April 1, 1935, to July 1, 1936 (Sec. 9 (b)(3)). These rates are of course subject to modification and change in accordance with the provisions of Sec. 9(b)(6) above referred to.

Reading Sec. 9 as a whole, the conclusion is inescapable that the rate of the tax is to be such rate as the Secretary of Agriculture determines will best effectuate the declared policy of the Act. Taking each apparent limitation contained in the multitudinous provisions of Sec. 9 of the Act, as amended, and following it back through all its meanders, in every case leads ultimately to the supposed specific limitation being absorbed in and nullified by the general power conferred upon the Secretary to make such adjustment in the rate as he *deems necessary to effectuate* the declared policy of the Act. Whether the rate is increased, decreased, abolished, or left as it is, rests solely in the uncontrolled discretion of the Secretary. Furthermore, under Secs. 11 and 15, the Secretary is empowered in his sole discretion to exclude any commodity or classification, type, or grade thereof from the operation of the tax, to suspend the tax or cause a refund thereof, or to exempt the processors of any given commodity from the tax,

and these sections contain nothing which could be considered even a gesture at control of the discretion of the Secretary. All that is required is that he be of the opinion that the exemption, suspension, or refund will tend to effectuate the policy of the Act.

The "policy" of the title affords no standard whatever. It is only that the Secretary of Agriculture, through the powers conferred on him in the title, shall so regulate Agriculture as to reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy equivalent to the purchasing power of agricultural commodities in the base period. . The only limitation contained in the entire Act which is even apparently susceptible of definite determination is Sec. 9(b)(1), which, read alone, would seem to forbid the Secretary to *increase* the amount of the tax beyond the difference between the current average farm price of the commodity and the fair exchange value thereof. The apparent limitation disappears, however, when we read the provisions of Sec. 9(b)(6) (D) which provides that:

> "In accordance with the formulae, standards, and requirements *prescribed in this title,* any rate of tax prescribed in paragraphs (2), (3), (4), or (5) of this subsection or which is established pursuant to this paragraph (6) *shall be increased.*"

The "formulae, standards, and requirements prescribed in this title" include, of course, the provision in Sec. 9(a) which authorizes the Secretary to ad-

just the rate of the tax in such manner as he finds "necessary to effectuate the declared policy." This plainly gives the Secretary authority, if he finds it necessary to effectuate the purposes of the title, to raise the tax beyond a rate which equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity as determined by him, and this has been the administrative interpretation of the Act. *F. G. Vogt & Sons v. Rothensies* (D. C., E. D., Pa., 1935), 11 F. Supp. 225, 229. However, if the apparent limitation of Sec. 9(b)(1) were not destroyed by other provisions of the Act, the supposed standard contained in it is actually too vague and indefinite to be any real standard at all. The "fair exchange value" is defined as the price that will give a commodity the same purchasing power with respect to articles farmers buy as such commodity had during the base period. This the Secretary determines from "available statistics" of the Department of Agriculture. He likewise determines the current average farm price from the same source. He is not confined in his selection from the tremendous amount of data to be found in the Department of Agriculture but is free to roam at will, including some data and rejecting other, until a figure is finally reached. In determining the purchasing power of hogs, for example, during the base period, shall the Secretary select figures from the Chicago market, from the Kansas City market, from the St. Louis market, from the Ft. Worth market, or shall he

average them all together? And in determining what articles farmers buy is he to be governed by the purchases of the prosperous farmer, by the purchases of the average farmer, or by the purchases of the poor farmer? Is the price of articles that farmers buy to be determined by the delivered price or by the price f.o.b. factory? Obviously the average cost of farm machinery, for example, varies materially in proportion to the distance of the purchasing farmer from the industrial centers where the machinery is fabricated. Should the Secretary select the average cost of such machinery to the Indiana farmer or should he select the average cost to the California farmer? For aught that appears in the Act he may select any figure he pleases to arrive at his average. Indeed, it is not too much to say that a dozen competent statisticians could be loosed in the files of the Department of Agriculture for the purpose of determining the rate of the tax in accordance with the provisions of the Act and come out with a dozen different, and equally defensible, results. *cf. West v. Chesapeake & Potomac Tel. Co.* (June 3, 1935), not yet officially reported. Such a standard is in effect no standard at all.

Assuming, however, that the standard for determining the *initial* rate of the tax is sufficiently definite to form a workable standard, it does not follow that there has been no unconstitutional delegation of legislative power. The Secretary is still left free, by the very terms of the Act, to depart from the supposed standard at any time when, in his sole and uncontrolled discretion, it appears to him that

the departure from the standard will *tend to effectuate the purposes of the Act.* Further the exercise of this discretion by the Secretary would necessarily be based in practically all instances upon his personal prognostications as to future, and necessarily presently indeterminable, events. The so-called "hearings" and "findings" in some instances required by the Act are but forms and, of necessity, could be nothing else. The "hearings" could be no more than a forum for the expression of *opinions* and the "findings" could be no more than the Secretary's own opinion based on his personal belief. Whether he acts honestly or dishonestly, his opinions are final and not subject to review.

Turning now to the authority delegated to the Secretary to cause a tax to become applicable, as distinguished from the amount of it, we find the discretion given is quite as broad as, if not broader than, that given in other parts of the Act. Under Sec. 8(1) of the Act all that is necessary to bring into effect a tax with respect to a given commodity is for the Secretary to have *"reason to believe"* that the average farm price of the commodity is *"likely to be* less than the fair exchange value thereof" during the succeeding marketing year and that the exercise of any of the powers conferred upon him under subsections (2) and (3) of Sec. 8 would *"tend* to effectuate" the declared policy of the Act. Thus a tax may be imposed upon the basis of a mere belief entertained by the Secretary. Having thus imposed the tax he may use the proceeds thereof to make rental or benefit payments in such amounts

as he finds "to be fair and reasonable and best calculated to effectuate the declared policy of this title" for the purpose of reducing acreage and production with respect to such commodity to such extent as he finds "will *tend* to effectuate the declared policy" of the Act. He is likewise authorized to make certain other payments in such amounts and in such manner as he finds "to be fair and reasonable and best calculated to effectuate" the policy of the Act. If this is not complete delegation of the legislative power of Congress, it is difficult to conceive what would be.

Taking the Act as a whole, it is plain that it constitutes a delegation "* * * of power to make the law, which necessarily involves a discretion as to what it shall be * * *." *Field v. Clark, supra,* p. 693. Congress has not here said that there shall be a tax upon the processing of defined commodities, at a fixed rate, but has actually done nothing more than declare a congressional policy that farm income be increased, with full and unhampered discretion left to the Secretary to determine whether it is economically desirable and practically feasible to attempt to achieve that purpose by means of a processing tax.

The grave dangers inherent in such unlimited delegations of legislative power could not be better illustrated than by the practical operations of the present Act. By administrative interpretation the delegation of the power to ultimately determine the question of whether there shall be a tax has been

carried beyond the Secretary and vested *in the very persons who would receive the proceeds of the tax if it were levied.* The Secretary, before determining that there is to be a crop and acreage reduction program, sends his agents among the farmers to take votes for the purpose of determining whether a sufficient number of them will co-operate to make the program effective. (Br. p. 76.) If the vote is favorable, the program is declared and a tax goes into effect with respect to the particular commodity involved. If the vote is unfavorable, the declaration is not made and, of course, there is no tax. Thus, under the Act, the ultimate power to determine whether the processors shall pay a tax is lodged in the farmers who are to be the objects of the government's bounty. *cf. Seattle Trust Company v. Roberge* (1928), 278 U. S. 116.

Hampton & Company v. United States (1928), 276 U. S. 394, mainly relied upon by the government, in no wise sustains the delegation of power contained in this Act. In that case the President was required, pursuant to findings made by the Tariff Commission, to increase or reduce the tariff on imports in such manner as to equalize the differences in cost of production in the United States and abroad. The normal rate was definitely fixed by the Tariff Act and the President was not authorized to increase or decrease such fixed rate by more than 50%. He was likewise forbidden to change any article from the free list to the dutiable list. The objects upon which the tariff fell were definitely fixed by the Act and were not subject to

change by the President. His authority was limited to the findings of fact, according to a formula, and he was not authorized to depart therefrom nor to use an unlimited discretion to pursue means thought desirable by him for the purpose of increasing prices and reducing production.

The delegation here is different both in kind and degree. If it had fixed a definite rate of taxation on definite commodities with power lodged in the Secretary to increase or decrease the rate of the tax, within defined limits, and set up in the Act a formula to be employed by which, through mathematical calculations, the variation in rate could be fixed, the *Hampton case* might be in point. Here, however, the very existence of any tax at all depends upon the beliefs of the Secretary. Which basic agricultural commodities are to be taxed and which are to be exempt from taxation are subject to his sole discretion and he may add to or subtract from the list at his pleasure. The rate of the tax fixed according to the formula contained in the Act may be adjusted up or down by him without limitation. He can forgive the tax and even require the return of a tax already paid. He determines how much is to be paid to the farmers by way of benefits and also determines to what extent the farmer shall reduce his crops or acreage. He determines who shall be the beneficiaries of the Congressional largess and who shall be excluded from the fold. In short, he, and he alone, is vested with complete control over the production of basic agricultural commodities in

the United States and equally complete control of taxation on processors of such commodities. It is unthinkable that Congress, consistently with the Constitution, can so completely abdicate its powers, and the citation of the *Hampton Case,* which itself went to the "verge of the law," serves only to emphasize the far-reaching and uncontrolled delegation here. *Panama Refining Co. v. Ryan* (1935), 293 U. S. 388; *Schechter Poultry Corp. v. United States, supra.*

The government will doubtless urge that these petitioners are not in a position to contest the validity of the delegation of the legislative power since the tax rate on rice is fixed at 1c per pound based on the weight of the rough rice when it reaches the mill. (Sec. 9(b)(3)). The answer is that the tax on rice is simply a single inseparable part of the whole Act and could not be upheld if all the other taxes assessed pursuant to the Act were declared invalid. Congress, obviously, would not have passed the Agricultural Adjustment Act with reference to rice alone. Petitioners are required to pay a tax only by virtue of the provisions of the Act and if that Act is, as a whole, unconstitutional because of the delegations of legislative power contained in it, it is submitted that they are entitled to assert this invalidity. The fact that the Secretary has not changed the rate with respect to rice (as he is authorized to do) does not mean that he has not exercised the discretion conferred on him by the Act with respect to that rate. Under this discretion he could raise or lower the rate, or abolish the tax, or even provide for a

return to these petitioners of taxes already paid. A determination not to lower the rate, or to abolish the tax, so far as these petitioners are concerned is, in effect, an affirmative determination by the Secretary that in his opinion the present rate is a correct one. This is a plain exercise of discretion to the disadvantage of petitioners. Under the circumstances it is meaningless to say that a discretion to lower a tax may not be complained of by a taxpayer because it is beneficial to him. The Secretary here can lower the tax to zero and, so long as he does not do so, it is solely by virtue of his discretion that petitioners have to pay any tax at all. Even if this were not true, petitioners would still be entitled to assert the invalidity of the delegation with respect to the tax on other commodities on the broad proposition, stated above, that the tax on rice is an inseparable part of the Act as a whole and therefore is dependent for its validity upon the validity of the Act as a whole.

There remains for consideration Sec. 9(b)(6)(G) which provides that if any rate of tax fixed pursuant to paragraph 9(b)(6) is held unconstitutional there shall be levied, collected, and paid in lieu of the taxes fixed pursuant to the provisions of said paragraph (6), a tax at the rates fixed under paragraphs (2), (3), (4) or (5) to be in effect until changed by Congress, or until terminated by the Secretary as provided in Sec. 9(a), or by the President under the provisions of Sec. 13. It is noteworthy that this provision refers only to taxes fixed under the provisions of Sec. 9(b)(6). By the very

terms of that section, however, the rates of tax fixed under it do not apply after July 31, 1936, with respect to rice, and after December 31, 1937, with repect to other commodities, after which dates the Secretary is directed to fix the rates in accordance with the "formulae, standards, and requirements" provided in the remainder of the title. Furthermore, since the so-called "specific rates" with respect to all commodities other than rice are not rates actually fixed by Congress at all, but rates fixed by the Secretary and sought to be ratified by Congress, to give Sec. (G) effect would simply be to permit Congress to re-ratify tax rates fixed by the Secretary. (Sec. 9(b)(2)). It appears on the face of the Act that Congress did not intend to fix its own specific rates with reference to any commodities other than rice. If it had it could have put a figure into the Act with respect to them just as it did with respect to rice. What it did with respect to these other commodities, however, was simply to adopt by reference whatever rates, fixed by the Secretary, happened to be in force on the effective date of the amendment. The rates of course could, and did, change during the course of the bill containing the amendment through Congress and prior to its effective date. It would have been manifestly impossible for Congress to know, when the Act was being voted upon, what the rates with respect to these other commodities would be. These rates are therefore just as much rates fixed in the discretion of the Secretary as if Sec. 9(b)(2) of the amendment had never been en-

acted. The infirmity of existing rates may not be cured by the device of attempting to adopt in their stead rates which were themselves invalid. Beyond this the Secretary is authorized, under Secs. 9(a), 9(b)(1), and 9(c) and Secs. 11 and 15 of the Act, to modify the rates or make exemptions, irrespective of the provisions of Sec. 9(b)(6). It would therefore be impossible to tell whether a rate modification had been made pursuant to the powers granted in Sec. 9(b)(6) or pursuant to some other equally applicable provision of the Act. Since the conditions upon which the provisions of Sec. 9(b)(6)(G) are to become effective are incapable of definite ascertainment, it is completely ineffective. Even if it were effective it would not operate to cure the unconstitutional delegation of power but only to suspend it, in the case of rice, for a few months. Of course this section would have no bearing upon the situation if the Act were declared unconstitutional on any basis other than the delegation of legislative power.

CONCLUSION

It is submitted that the Agricultural Adjustment Act, as amended on August 24, 1935, is wholly unconstitutional. It is further submitted that these petitioners are entitled to injunctive relief and that all of these cases should be reversed with instructions to grant a permanent injunction against the collection of the taxes here assailed in any manner whatsoever or, in the alternative, with instructions to grant a permanent injunction restraining the col-

lection of the taxes assailed by means of any of the summary proceedings provided by Secs. 115 to 131, Title 26, U. S. C., as amended, and that this court should enter an order directing the depositary, heretofore appointed by the court to receive and hold the taxes here assailed during the pendency of these causes, to turn over to petitioners and each of them the full amount of such moneys so deposited by them.

Respectfully submitted,

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APPENDIX A

R. S. ART. 3224

No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

* * *

SECTION 21 OF AGRICULTURAL ADJUSTMENT ACT

SEC. 21. (*a*) No suit, action, or proceeding (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (*d*) of this section, may be reserved in the court's order.

(*b*) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regulations of the Secretary with the approval of the President prior to the date of the adoption of this

amendment, are hereby legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which have accrued and remain unpaid on the date of the adoption of this amendment shall be assessed and collected pursuant to Section 19, and to the provisions of law made applicable thereby. Nothing in this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary of Agriculture or of the President done or made prior to the date of the adoption of this amendment.

(*c*) The making of rental and benefit payments under this title, prior to the date of the adoption of this amendment, as determined, prescribed, proclaimed and made effective by the proclamations of the Secretary of Agriculture or of the President or by regulations of the Secretary, and the initiation, if formally approved by the Secretary of Agriculture prior to such date of adjustment programs under Section 8 (1) of this title, and the making of agreements with producers prior to such date, and the adoption of other voluntary methods prior to such date, by the Secretary of Agriculture under this title, and rental and benefit payments made pursuant thereto, are hereby legalized and ratified, and the making of all such agreements and payments, the initiation of such programs, and the adoption of all such methods prior to such date are hereby legalized, ratified, and confirmed as fully to all intents and purposes as if each such agreement, program, method, and payment had been specifically authorized and made effective and the rate and amount

thereof fixed specifically by prior Act of Congress.

(*d*) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considerd by the court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (*a*) or (*c*) of Section 15, Section 16, or Section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of Section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or

failure to exercise any power conferred on him under this title, there shall be refunded or credited to any person (not a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (*a*) and (*b*) of Section 16, had the tax terminated by proclamation pursuant to the provisions of Section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish to the satisfaction of the Commissioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held invalid a claim therefor (conforming to such regula-

tions as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2) no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, or jurisdiction of such courts based upon the amount in controversy.

(*e*) In connection with the establishment, by any claimant, of the facts required to be established in subsection (*d*) of this section, the Commissioner of Internal Revenue is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda, relative to any matter affecting the findings to be made by the Commissioner pursuant to subsection (*d*) of this section, to require the attendance of the claimant or of any officer or employee of the claimant, or the attendance of any other person having knowledge in the premises, and to take, or cause to be taken, his testimony with reference to any such matter, with power to administer oaths to such person or persons. It shall be lawful for the Commissioner, or any collector designated

by him, to summon witnesses on behalf of the United States or of any claimant to appear before the Commissioner, or before any person designated by him, at a time and place named in the summons, and to produce such books, papers, correspondence, memoranda, or other records as the Commissioner may deem relevant or material, and to give testimony or answer interrogatories, under oath, relating to any matter affecting the findings to be made by the Commissioner pursuant to subsection (*d*) of this section. The provisions of Revised Statutes 3174 and of Revised Statutes 3175 shall be applicable with respect to any summons issued pursuant to the provisions of this subsection. Any witness summoned under this subsection shall be paid, by the party on whose behalf such witness was summoned, the same fees and mileage as are paid witnesses in the courts of the United States. All information obtained by the Commissioner pursuant to this subsection shall be available to the Secretary of Agriculture upon written request therefor. Such information shall be kept confidential by all officers and employees of the Department of Agriculture, and any such officer or employee who violates this requirement shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both, and shall be removed from office.

(*f*) No refund, credit, or abatement shall be made or allowed of the amount of any tax, under Section 15, or Section 17, unless, within one year after the right to such refund, credit, or abatement has accrued, a claim for such refund, credit, or abatement (conforming to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled to such refund, credit, or abatement, except that if the right to any such refund, credit, or abatement accrued prior to the date of the adoption of this amendment, then

such one-year period shall be computed from the date of this amendment. No interest shall be allowed or paid, or included in any judgment, with respect to any such claim for refund or credit.

(*g*) The provisions of Section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax, or any refund or credit authorized by subsection (*a*) or (*c*) of Section 15, Section 16, or Section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of Section 317 of the Tariff Act of 1930.

APPENDIX B

Provisions of Title 26, U. S. C. Dealing With Collection of Taxes By Distraint

Sec. 115. *Lien for Taxes.* (*a*) If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. (Balance of Section deals with recording of lien and giving of releases.) (R. S. Sec. 3186; Mar. 1, 1879, C. 125, Sec. 3, 20 Stat. 331; Mar. 4, 1913, C. 166, 37 Stat. 1016; Feb. 26, 1925, C. 344, 43 Stat. 994; May 29, 1928, 8 a.m., C. 852, Title IV, Sec. 613, 45 Stat.)

116. *Distraint for Taxes.* If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with 5 per centum additional thereto, and interest as aforesaid, by distraint and sale, in the manner hereafter provided, of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid. (Balance of Section deals with exempt property.) (R. S. Sec. 3187; June 2, 1924, 4:01 p.m., C. 234, Sec. 1016, 43 Stat. 343.)

117. *Same; Levy.* In such case of neglect or refusal, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property and rights to property, except such as are exempt by Section 116 of this title, belonging to such person, or

on which the said lien exists, for the payment of the sum due as aforesaid, with interest and penalty for nonpayment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy. (R. S. Sec. 3188.)

118. *Same; Exhibit of Evidences Relating to Property.* All persons, and officers of companies or corporations, are required, on demand of a collector or deputy collector about to distrain or having distrained on any property, or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the tax due as aforesaid. (R. S. Sec. 3189.)

119. *Same; Proceedings On.* When distraint is made, as aforesaid, the officer charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the officer making such distraint, shall be left with the owner or possessor of such goods or effects, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded, and the time and place of sale; and the said officer shall forthwith cause a notification to be published in some newspaper within the county wherein said distraint is made, if a newspaper is published in said county, or to be publicly posted at the post office, if there be one within five miles nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Such notice shall specify the articles distrained, and the time and place for the sale thereof. Such time shall not be less than ten nor more than twenty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notice as herein provided, and the place proposed for the sale shall not be more than five miles distant from the place

of making such distraint. Said sale may be adjourned from time to time by said officer, if he deems it advisable, but not for a time to exceed in all thirty days. (R. S. Sec. 3190.)

120. *Same; Sale of Property Subject to Tax.* When property subject to tax, but upon which the tax has not been paid, is seized upon distraint and sold, the amount of such tax shall, after deducting the expenses of such sale, be first appropriated out of the proceeds thereof to the payment of the tax. And if no assessment of such tax has been made upon such property, the collector shall make a return thereof in the form required by law, and the Commissioner of Internal Revenue shall assess the tax thereon. (R. S. Sec. 3191.)

121. *Same; Sale of Property; Purchase for United States.* When any personal property is advertised for sale under distraint as aforesaid, the officer making the seizure shall proceed to sell such property at a public auction, offering the same at a minimum price, including the expenses of making the levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the officer conducting the sale may declare the same to be purchased by him for the United States. The property so purchased may be sold by the collector within whose district the sale was made under such regulations as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. The collector shall render to the Commissioner a distinct account of all charges incurred in such sales, and, in case of resale, shall pay into the Treasury the proceeds as provided in Section 3210 of the Revised Statutes, as amended (R. S. 3192, as amended May 10, 1934, 11:40 a.m., C. 277, Sec. 508, 48 Stat.)

122. *Same; Restoration of Property on Payment Before Sale.* (This merely provides for return of

property distrained upon if tax is paid prior to sale.) (R. S. 3193.)

123. *Same; Effect of Certificate of Sale.* In all cases of sale, as aforesaid, the certificate of such sale shall be prima-facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale, and shall transfer to the purchaser all right, title, and interest of such delinquent in and to the property sold; and where such property consists of stocks, said certificate shall be notice, when received, to any corporation, company, or association of said transfer, and shall be authority to such corporation, company, or association to record the same on their books and records in the same manner as if transferred or assigned by the party holding the same, in lieu of any original or prior certificates, which shall be void, whether canceled or not. And said certificates, where the subject of sale is securities or other evidences of debt, shall be good and valid receipts to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt. (R. S. Sec. 3194.)

124. *Same; When Property Not Divisible.* (This deals with special case of indivisible property and allows sale of the whole even though its value exceeds amount of the tax. (R. S. Sec. 3195; June 2, 1924, 4:01 p.m., C. 234, Sec. 1031 (*a*), 43 Stat. 351; re-enacted Jan. 26, 1926, 10:25 a.m., C. 27, Title XI, Sec. 1128 (*a*), 144 Stat. 124.)

125. *Real Estate; Sale to Satisfy Taxes.* When goods, chattels, or effects sufficient to satisfy the taxes imposed upon any person are not found by the collector or deputy colector, he is authorized to collect the same by seizure and sale of real estate. (R. S. Sec. 3196.)

126. *Same; Proceedings.* The officer making the

seizure mentioned in Section 125 of this title shall give notice to the person whose estate it is proposed to sell by giving him in hand, or leaving at his last or usual place of abode, if he has any such within the collection district where said estate is situated, a notice, in writing, stating what particular estate is to be sold, describing the same with reasonable certainty, and the time when and place where said officer proposes to sell the same; which time shall not be less than twenty nor more than forty days from the time of giving said notice. The said officer shall also cause a notification to the same effect to be published in some newspaper within the county where such seizure is made, if any such there be, and shall also cause a like notice to be posted at the postoffice nearest to the estate seized, and in two other public places within the county; and the place of said sale shall not be more than five miles distant from the estate seized, except by special order of the Commissioner of Internal Revenue. At the time and place appointed, the officer making such seizure shall proceed to sell the said estate at public auction, offering the same at a minimum price, including the expense of making such levy, and all charges for advertising and an officer's fee of $10. (Balance of section deals with details of conducting sale.) (R. S. Sec. 3197; Feb. 27, 1877, C. 69, Sec. 1, 19 Stat. 248; Mar. 1, 1879, C. 125, Sec. 3, 20 Stat. 331; May 28, 1896, C. 252, 29 Stat. 179; Mar. 3, 1905, C. 1483, Sec. 1, 33 Stat. 1207; July 19, 1919, C. 24, Sec. 1, 41 Stat. 209.)

127. *Same; Certificate of Purchase; Deed.* (This provides for execution of deed by the collector to the purchaser.) (R. S. Sec. 3198.)

128. *Same; Deed Prima-Facie Evidence.* The deed of sale given in pursuance of Section 127 of this title shall be prima-facie evidence of the facts therein stated; and if the proceedings of the officer as set forth have been substantially in accordance with the

provisions of law, shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real estate thus sold at the time the lien of the United States attached thereo. (R. S. Sec. 3199.)

129. *Same; Place of Seizure (and Sale).* Any collector or deputy collector may, for the collection of taxes imposed upon any person, and committed to him for collection, seize and sell any of the property, real or personal (except property exempt from distraint and sale, under Section 3187 of the Revised Statutes), or any right or interest therein, of such person situated in any other collection district within the State in which such officer resides, notwithstanding the provisions of Section 3209 of the Revised Statutes; and his proceedings in relation thereto shall have the same effect as if the same were had in his proper collection district. (R. S. Sec. 3200; amended Jan. 26, 1926, 11:25 a.m., Title XI, Sec. 1129, 44 Stat. 125.)

130. *Same; Redemption Prior to Sale.* (This provides for return of property seized on payment of tax.) (R. S. Sec. 3201.)

131. *Same; Redemption After Sale.* (This provides for redemption after sale by payment to purchaser, within one year after the sale, of the purchase price with interest at 20% per annum.) (R. S. 3202.)

APPENDIX C

Penalty Provisions

Section 19(b) of the Agricultural Adjustment Act:

> "Sec. 19. * * * (*b*) All provisions of law, including penalties, applicable with respect to the taxes imposed by Section 600 of the Revenue Act of 1926, and the provisions of Section 626 of the Revenue Act of 1932, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable in respect of taxes imposed by this title: * * * ."

Section 1114 of 1926 Revenue Act, applicable with respect to taxes imposed by Section 600 of that Act:

> "Sec. 1114. (*a*) Any person required under this Act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act, who wilfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.
>
> "(*b*) Any person required under this Act to collect, account for and pay over any tax imposed by this Act, who wilfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by

this Act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

"(c) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal-revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

"(d) Any person who willfully fails to pay, collect, or truthfully account for and pay over, any tax imposed by Titles IV, V, VI, VII, VIII, and IX, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of Section 3176 of the Revised Statutes, as amended, or for any offense for which a penalty has been recovered under Section 3256 of the Revised Statutes.

"(e) Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand

by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

"(*f*) The term 'person' as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs."

APPENDIX D

AGRICULTURAL ADJUSTMENT ACT, AS AMENDED, AS OF AUGUST 24, 1935

AN ACT

To relieve the existing national economic emergency by increasing agricultural purchasing power to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—AGRICULTURAL ADJUSTMENT

Declaration of Emergency.

That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities, and render imperative the immediate enactment of title I of this Act.

Declaration of Policy

SEC. 2. It is hereby declared to be the policy of Congress—

(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; and, in the case of all commodities for which the base period is the pre-war period, August, 1909, to July, 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contracted with such interest payments and tax payments during the base period. The base period in the case of all agricultural commodities except tobacco and potatoes shall be the pre-war period, August, 1909,-July, 1914. In the case of tobacco and potatoes, the base period shall be the post-war period, Augsut, 1919,-July, 1929.

(2) To protect the interest of the consumer by (*a*) approaching the level of prices which it is declared to be the policy of Congress to establish in sub-section (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (*b*) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in sub-section (1) of this section.

PART 2—COMMODITY BENEFITS

General Powers.

SEC. 8. (1) Whenever the Secretary of Agriculture has reason to believe that:

(*a*) The current average farm price for any basic agricultural commodity is less than the fair exchange value thereof, or the average farm price of such commodity is likely to be less than the fair exchange value thereof for the period in which the production of such commodity during the current or next succeeding marketing year is normally marketed, and

(*b*) The conditions of and factors relating to the production, marketing, and consumption of such commodity are such that the exercise of any one or more of the powers conferred upon the Secretary under sub-sections (2) and (3) of this section would tend to effectuate the declared policy of this title,

he shall cause an immediate investigation to be made to determine such facts. If, upon the basis of such investigation, the Secretary finds the existence of such facts, he shall proclaim such determination and shall exercise such one or more of the powers conferred upon him under sub-sections (2) and (3) of this section as he finds, upon the basis of an investigation, administratively practicable and best calculated to effectuate the declared policy of this title.

(2) Subject to the provisions of sub-section (1) of this section, the Secretary of Agriculture shall provide, through agreements with producers or by other voluntary methods,

(*a*) For such adjustment in the acreage or in the production for market, or both, of any basic agricultural commodity, as he finds, upon the basis of investigation made pursuant to sub-

section (1) of this section, will tend to effectuate the declared policy of this title, and to make such adjustment program practicable to operate and administer, and

(*b*) For rental or benefit payments in connection with such agreements or methods in such amounts as he finds, upon the basis of such investigation, to be fair and reasonable and best calculated to effectuate the declared policy of this title and to make such program practicable to operate and administer, to be paid out of any moneys available for such payments, or, subject to the consent of the producer, to be made in quantities of one or more basic agricultural commodities acquired by the Secretary pursuant to this title.

(3) Subject to the provisions of sub-section (1) of this section, the Secretary of Agriculture shall make payments, out of any moneys available for such payments, in such amounts as he finds, upon the basis of the investigation made pursuant to subsection (1) of this section, to be fair and reasonable and best calculated to effectuate the declared policy of this title:

(*a*) To remove from the normal channels of trade and commerce quantities of any basic agricultural commodity or product thereof;

(*b*) To expand domestic or foreign markets for any basic agricultural commodity or product thereof;

(*c*) In connection with the production of that part of any basic agricultural commodity which is required for domestic consumption.

(4) Whenever, during a period during which any of the powers conferred in sub-section (2) or (3) is being exercised, the Secretary of Agriculture

has reason to believe that, with respect to any basic agricultural commodity:

(*a*) The current average farm price for such commodity is not less than the fair exchange value thereof, and the average farm price for such commodity is not likely to be less than the fair exchange value thereof for the period in which the production of such commodity during the current or next succeeding marketing year is normally marketed, or

(*b*) The conditions of and factors relating to the production, marketing, and consumption of such commodity are such that none of the powers conferred in sub-sections (2) and (3), and no combination of such powers, would, if exercised, tend to effectuate the declared policy of this title,

he shall cause an immediate investigation to be made to determine such facts. If, upon the basis of such investigation, the Secretary finds the existence of such facts, he shall proclaim such determination, and shall not exercise any of such powers with respect to such commodity after the end of the marketing year current at the time when such proclamation is made and prior to a new proclamation under sub-section (1) of this section, except insofar as the exercise of such power is necessary to carry out obligations of the Secretary assumed, prior to the date of such proclamation made pursuant to this sub-section, in connection with the exercise of any of the powers conferred upon him under sub-sections (2) or (3) of this section.

(5) In the course of any investigation required to be made under sub-section (1) or sub-section (4) of this section, the Secretary of Agriculture shall hold one or more hearings, and give due notice and opportunity for interested parties to be heard.

(6) No payment under this title made in an agricultural commodity acquired by the Secretary in pursuance of this title shall be made in a commodity other than that in respect of which the payment is being made. For the purposes of this sub-section, hogs and field corn may be considered as one commodity.

(7) In the case of sugar beets or sugar cane, in the event that it shall be established to the satisfaction of the Secretary of Agriculture that returns to growers or producers, under the contracts for the 1933-1934 crop of sugar beets or sugar cane, entered into by and between the processors and producers and/or growers thereof, were reduced by reason of the payment of the processing tax, and/or the corresponding floor stocks tax, on sugar beets or sugar cane, in addition to the foregoing rental or benefit payments, the Secretary of Agriculture shall make such payments, representing in whole or in part such tax, as the Secretary deems fair and reasonable, to producers who agree, or have agreed, to participate in the program for reduction in the acreage or reduction in the production for market, or both, of sugar beets or sugar cane.

(8) In the case of rice, the Secretary of Agriculture, in exercising the power conferred upon him by sub-section (2) of this section to provide for rental or benefit payments, is directed to provide in any agreement entered into by him with any rice producer pursuant to such sub-section, upon such terms and conditions as the Secretary determines will best effectuate the declared policy of this title, that the producer may pledge for production credit in whole or in part his right to any rental or benefit payments under the terms of such agreement and that such producer may designate therein a payee to receive such rental or benefit payments.

(9) Under regulations of the Secretary of Agriculture requiring adequate facilities for the storage

of any non-perishable agricultural commodity on the farm, inspection and measurement of any such commodity so stored, and the locking and sealing thereof, and such other regulations as may be prescribed by the Secretary of Agriculture for the protection of such commodity and for the marketing thereof, a reasonable percentage of any benefit payment may be advanced on any such commodity so stored. In any such case, such deduction may be made from the amount of the benefit payment as the Secretary of Agriculture determines will reasonably compensate for the cost of inspection and sealing, but no deduction may be made for interest.

Processing Tax

Sec. 9. (a) To obtain revenue for extraordinary expenses incurred by reason of the national economic emergency, there shall be levied processing taxes as hereinafter provided. When the Secretary of Agriculture determines that any one or more payments authorized to be made under section 8 are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation; except that (1) in the case of sugar beets and sugar cane, the Secretary of Agriculture shall, on or before the thirtieth day after the adoption of this amendment proclaim that rental or benefit payments with respect to said commodities are to be made, and the processing tax shall be in effect on and after the thirtieth day after the date of the adoption of this amendment, and (2) in the case of rice, the Secretary of Agriculture shall, before April 1, 1935, proclaim that rental or benefit payments are to be made with respect thereto, and the processing tax shall be in effect on and after April 1, 1935. In the

case of sugar beets and sugar cane, the calendar year shall be considered to be the marketing year and for the year 1934 the marketing year shall begin January 1, 1934. In the case of rice, the period from August 1 to July 31, both inclusive, shall be considered to be the marketing year. The processing tax shall be levied, assessed, and collected upon the first domestic processing of the commodity, whether of domestic production or imported, and shall be paid by the processor. The rate of tax shall conform to the requirements of sub-section (b). Such rate shall be determined by the Secretary of Agriculture as of the date the tax first takes effect, and the rate so determined shall, at such intervals as the Secretary finds necessary to effectuate the declared policy, be adjusted by him to conform to such requirements. The processing tax shall terminate at the end of the marketing year current at the time the Secretary proclaims that all payments authorized undes Section 8 which are in effect are to be discontinued with respect to such commodity. The marketing year for each commodity shall be ascertained and prescribed by regulations of the Secretary of Agriculture: Provided, That upon any article upon which a manufacturers' sales tax is levied under the authority of the Revenue Act of 1932 and which manufacturers' sales tax is computed on the basis of weight, such manufacturers' sales tax shall be computed on the basis of the weight of said finished article less the weight of the processed cotton contained therein on which a processing tax has been paid.

Tax Rate Generally.

(b) (1) The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, plus such percentage of such difference, not to exceed 20 per

centum as the Secretary of Agriculture may determine will result in the collection, in any marketing year with respect to which such rate of tax may be in effect pursuant to the provisions of this title, of an amount of tax equal to (A) the amount of credits or refunds which he estimates will be allowed or made during such period pursuant to Section 15(c) with respect to the commodity, and (B) the amount of tax which he estimates would have been collected during such period upon all processings of such commodity which are exempt from tax by reason of the fact that such processings are done by or for a State, or a political subdivision or an institution thereof, had such processings been subject to tax. If, prior to the time the tax takes effect, or at any time thereafter, the Secretary has reason to believe that the tax at such rate, or at the then existing rate, on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, will cause or is causing such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depression of the farm price of the commodity, then the Secretary shall cause an appropriate investigation to be made, and afford due notice and opportunity for hearing to interested parties. If thereupon the Secretary determines and proclaims that any such result will occur or is occurring, then the processing tax on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be at such lower rate or rates as he determines and proclaims will prevent such accumulation of surplus

stocks and depression of the farm price of the commodity, and the tax shall remain during its effective period at such lower rate until the Secretary, after due notice and opportunity for hearing to interested parties, determines and proclaims that an increase in the rate of such tax will not cause such accumulation of surplus stocks or depression of the farm price of the commodity. Thereafter the processing tax shall be at the highest rate which the Secretary determines will not cause such accumulation of surplus stocks or depression of the farm price of the commodity, but it shall not be higher than the rate provided in the first sentence of this paragraph.

Specific Tax Rates.

(2) In the case of wheat, cotton, field corn, hogs, peanuts, tobacco, paper, and jute, and (except as provided in paragraph (8) of this sub-section) in the case of sugar cane and sugar beets, the tax on the first domestic processing of the commodity generally or for any particular use, or in the production of any designated product for any designated use, shall be levied, assessed, collected, and paid at the rate prescribed by the regulations of the Secretary of Agriculture in effect on the date of the adoption of this amendment, during the period from such date of December 31, 1937, both dates inclusive.

Specific Tax Rate—Rice.

(3) For the period from April 1, 1935, to July 31, 1936, both inclusive, the processing tax with respect to rice shall be levied, assessed, collected, and paid at the rate of 1 cent per pound of rough ricee.

Specific Tax Rate—Marketing Year—Floor Stocks—Rye.

(4) For the period from September 1, 1935, to December 31, 1937, both inclusive, the processing tax with respect to rye shall be levied, assessed, collected, and paid at the rate of 30 cents per bushel of fifty-six pounds. In the case of rye, the first marketing year shall be considered to be the period commencing September 1, 1935, and ending June 30, 1936. Subsequent marketing years shall commence on July 1 and end on June 30 of the succeeding year. The provisions of Section 16 of this title shall not apply in the case of rye.

Specific Tax Rate—Floor Stocks—Barley.

(5) If at any time prior to December 31, 1937, a tax with respect to barley becomes effective pursuant to proclamation as provided in sub-section (a) of this section, such tax shall be levied, assessed, collected, and paid during the period from the date upon which such tax becomes effective to December 31, 1937, both inclusive, at the rate of 25 cents per bushel of forty-eight pounds. The provisions of Section 16 of this title shall not apply in the case of barley.

Adjustment of Rate.

(6) (A) Any rate of tax which is prescribed in paragraph (2), (3), (4), or (5) of this sub-section or which is established pursuant to this paragraph (6) on the processing of any commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be decreased (including a decrease to zero) in accordance with the formulae,

standards, and requirements of paragraph (1) of this sub-section, in order to prevent such reduction in the quantity of such commodity or the products thereof domestically consumed as will result in the accumulation of surplus stocks of such commodity or the products thereof or in the depression of the farm price of the commodity, and shall thereafter be increased in accordance with the provisions of paragraph (1) of this subsection but subject to the provisions of subdivision (B) of this paragraph (6).

(B) If the average farm price of any commodity, the rate of tax on the processing of which is prescribed in paragraph (2), (3), (4), or (5) of this sub-section or is established pursuant to this paragraph (6), during any period of twelve successive months ending after July 1, 1935, consisting of the first ten months of any marketing year and the last two months of the preceding marketing year—

(i) is equal to, or exceeds by 10 per centum or less, the fair exchange value thereof, or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 20 per centum of the fair exchange value thereof.

(ii) exceeds by more than 10 per centum, but not more than 20 per centum, the fair exchange value thereof, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 15 per centum of the fair exchange value thereof.

(iii) exceeds by more than 20 per centum

the fair exchange value thereof, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 10 per centum of the fair exchange value thereof.

(C) Any rate of tax which has been adjusted pursuant to this paragraph (6) shall remain at such adjusted rate unless further adjusted or terminated pursuant to this paragraph (6), until December 31, 1937, or until July 31, 1936, in the case of rice.

(D) In acordance with the formulae, standards, and requirements prescribed in this title, any rate of tax prescribed in paragraph (2), (3), (4), or (5) of this sub-section or which is established pursuant to this paragraph (6) shall be increased.

(E) Any tax, the rate of which is prescribed in paragraph (2), (3), (4), or (5) of this sub-section or which is established pursuant to this paragraph (6), shall terminate pursuant to proclamation as provided in Section 9(a) of this title or pursuant to Section 13 of this title. Any such tax with respect to any basic commodity which terminates pursuant to proclamation as provided in Section 9(a) of this title shall again become effective at the rate prescribed in paragraph (2), (3), (4), or (5) of this sub-section, subject, however, to the provisions of subdivisions (A) and (B) of this paragraph (6), from the beginning of the marketing year for such commodity next following the date of a new proclamation by the Secretary as provided in Section 9(a) of this title, if such marketing year begins prior to December 31, 1937, or prior to July 31, 1936, in the case of rice, and shall remain at such rate until altered or terminated pursuant to the provisions of Section 9 or terminated pursuant to Section 13 of this title.

(F) After December 31, 1937 (in the case of the

commodities specified in paragraphs (2), (4), and (5) of this sub-section), and after July 31, 1936 (in the case of rice), rates of tax shall be determined by the Secretary of Agriculture in accordance with the formulae, standards, and requirements prescribed in this title but not in this paragraph (6), and shall, subject to such formulae, standards, and requirements, thereafter be effective.

(G) If the applicability to any person or circumstances of any tax, the rate of which is fixed in pursuance of this paragraph (6), is finally held invalid by reason any provision of the Constitution or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be levied, assessed, collected, and paid (in lieu of all rates of tax fixed in pursuance of this paragraph (6) with respect to all tax liabilities incurred under this title on or after the effective date of each of the rates of tax fixed in pursuance of this paragraph (6), rates of tax fixed under paragraph (2), (3), (4), or (5), and such rates shall be in effect (unless the particular tax is terminated pursuant to proclamation, as provided in Section 9(a) or pursuant to Section 13) until altered by Act of Congress; except that, for any period prior to the effective date of such holding of invalidity, the amount of tax which represents the difference between the tax at the rate fixed in pursuance of this paragraph (6) and the tax at the rate fixed under paragraphs (2), (3), (4), and (5) shall not be levied, assessed, collected, or paid.

Rice—Special Rule.

(7) In the case of rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to a processor, except that, where the producer processes his own rice,

the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to the place of processing.

Sugar—Special Rule.

(8) In the case of sugar beets or sugar cane the rate of tax shall be applied to the direct-consumption sugar, resulting from the first domestic processing, translated into terms of pounds of raw value according to regulations to be issued by the Secretary of Agriculture, and in the event that the Secretary increases or decreases the rate of tax fixed by paragraph (2) of this sub-section, pursuant to the provisions of paragraph (6) of this sub-section, then the rate of tax to be so applied shall be the higher of the two following quotients: The difference between the current average farm price and the fair exchange value (A) of a ton of sugar beets and (B) of a ton of sugar cane, divided in the case of each commodity by the average extraction therefrom of sugar in terms of pounds of raw value (which average extraction shall be determined from available statistics of the Department of Agriculture); the rate of tax fixed by paragraph (2) of this sub-section or adjusted pursuant to the provisions of paragraph (6) of this subsection shall in no event exceed the amount of the reduction by the President on a pound of sugar raw value of the rate of duty in effect on January 1, 1934, under paragraph 501 of the Tariff Act of 1930, as adjusted to the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on December 11, 1902, and/or the provisions of the Act of December 17, 1903, Chapter 1.

Wheat Premiums.

(9) In computing the current average farm price in the case of wheat, premiums paid produc-

ers for protein content shall not be taken into account.

(c) For the purposes of part 2 of this title, the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period specified in Section 2; and, in the case of all commodities where the base period is the prewar period, August, 1909, to July, 1914, will also reflect interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during said base period; and the current average farm price and the fair exchange value shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture. The rate of tax upon the processing of any commodity, in effect on the date on which this amendment is adopted, shall not be affected by the adoption of this amendment, and shall not be required to be adjusted or altered, unless the Secretary of Agriculture finds that it is necessary to adjust or alter any such rate pursuant to Section 9(a) of this title.

(d) As used in part 2 of this title—(Sub-paragraphs 1 to 6 contain definitions of the word "processing" as to commodities other than rice.)

(7) In the case of rice—

(A) The term "rough rice" means rice in that condition which is usual and customary when delivered by the producer to a processor.

(B) The term "processing" means the cleaning, shelling, milling (including custom milling for toll as well as commercial milling), grinding, rolling, or other processing (except grinding or cracking by or for the producer thereof for feed for his own livestock, cleaning by or directly for a producer for seed purposes, and drying) of rough rice; and

in the case of rough rice with respect to which a tax-payment warrant has been previously issued or applied for by application then pending, the term "processing" means any one of the above mentioned processings or any preparation or handling in connection with the sale or other disposition thereof.

(C) The term "cooperating producer" means any person (including any share-tenant or share-cropper) whom the Secretary of Agriculture finds to be willing to participate in the 1935 production-adjustment program for rice.

(D) The term "processor," as used in sub-section (b-1) of Section 15 of this title, means any person (including a cooperative association of producers) engaged in the processing of rice on a commercial basis (including custom milling for toll as well as commercial milling.)

(8) In the case of any other commodity, the term "processing" means any manufacturing or other processing involving a change in the form of the commodity or its preparation for distribution or use, as defined by regulations of the Secretary of Argiculture; and in prescribing such regulations the Secretary shall give due weight to the customs of the industry.

(e) When any processing tax, or increase or decrease therein, takes effect in respect of a commodity the Secretary of Agriculture, in order to prevent pyramiding of the processing tax and profiteering in the sale of the products derived from the commodity, shall make public such information as he deems necessary regarding (1) the relationship between the processing tax and the price paid to producers of the commodity, (2) the effect of the processing tax upon prices to consumers of products of the commodity, (3) the relationship, in previous periods, between prices paid to the producers of the commodity and prices to consumers of the prod-

ucts thereof, and (4) the situation in foreign countries relating to prices paid to producers of the commodity and prices to consumers of the products thereof.

(f) For the purposes of part 2 of this title, processing shall be held to include manufacturing.

(g) Nothing contained in this title shall be construed to authorize any tax upon the processing of any commodity which processing results in the production of newsprint.

Miscellaneous.

Sec. 10. (a) The Secretary of Agriculture may appoint such officers and employees, subject to the provisions of the Classification Act of 1923 and Acts amendatory thereof, and such experts as are necessary to execute the functions vested in him by this title; and the Secretary may make such appointments without regard to the civil service laws or regulations; Provided, That no salary in excess of $10,000 per annum shall be paid to any officer, employee, or expert of the Agricultural Adjustment Administration, which the Secretary shall establish in the Department of Agriculture for the administration of the functions vested in him by this title: And provided further, That the State Administrator appointed to administer this Act in each State shall be appointed by the President, by and with the advice and consent of the Senate. Title II of the Act entitled "An Act to maintain the credit of the United States Government," approved March 20, 1933, to the extent that it provides for the impoundment of appropriations on account of reductions in compensation, shall not operate to require such impoundment under appropriations contained in this Act.

(b) (1) The Secretary of Agriculture is authorized to establish, for the more effective admin-

istration of the functions vested in him by this title, State and local committees, or associations of producers, and to permit cooperative associations of producers, when in his judgment they are qualified to do so, to act as agents of their members and patrons in connection with the distribution of payments authorized to be made under Section 8. The Secretary, in the administration of this title, shall accord such recognition and encouragement to producer-owned and producer-controlled cooperative associations as will be in harmony with the policy toward cooperative associations set forth in existing Acts of Congress, and as will tend to promote efficient methods of marketing and distribution.

(2) Each order issued by the Secretary under this title shall provide that each handler subject thereto shall pay to any authority or agency established under such order such handler's pro rata share (as approved by the Secretary) of such expenses as the Secretary may find will necessarily be incurred by such authority or agency, during any period specified by him, for the maintenance and functioning of such authority or agency, other than expenses incurred in receiving, handling, holding, or disposing of any quantity of a commodity received, handled, held, or disposed of by such authority or agency for the benefit or account of persons other than handlers subject to such order. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the agricultural commodity or product thereof covered by such order which is distributed, processed, or shipped by such cooperative association of producers. Any such authority or agency may maintain in its own name, or in the names of its members, a suit against any handler subject to an order for the collection of such handler's pro rata share of expenses. The several District Courts of the United States are

hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy.

(c) The Secretary of Agriculture is authorized, with the approval of the President, to make such regulations with the force and effect of law as may be necessary to carry out the powers vested in him by this title, including regulations establishing conversion factors for any commodity and articles processed therefrom to determine the amount of tax imposed or refunds to be made with respect thereto. Any violation of any regulation shall be subject to such penalty, not in excess of $100, as may be provided therein.

(d) The Secretary of the Treasury is authorized to make such regulations as may be necessary to carry out the powers vested in him by this title.

(e) The action of any officer, employee, or agent in determining the amount of and in making any payment authorized to be made under Section 8 shall not be subject to review by any officer of the Government other than the Secretary of Agriculture or Secretary of the Treasury.

(f) The provisions of this title shall be applicable to the United States and its possessions, except the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the Island of Guam; except that, in the case of sugar beets and sugar cane, the President, if he finds it necessary in order to effectuate the declared policy of this Act, is authorized by proclamation to make the provisions of this title applicable to the Phillippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the Island of Guam. The President is authorized to attach by Executive order any or all of such possessions to any internal revenue collection district for the purpose of carrying out the provisions of this title.

(g) No person shall, while acting in any official

capacity in the administration of this title, speculate, directly or indirectly, in any agricultural commodity or product thereof, to which this title applies, or in contracts relating thereto, or in the stock or membership interests of any association or corporation engaged in handling, processing, or disposing of any such commodity or product. Any person violating this sub-section shall upon conviction thereof be fined not more than $10,000 or imprisoned not more than two years, or both.

(h) For the efficient administration of the provisions of part 2 of this title, the provisions, including penalties, of Sections 8, 9, and 10 of the Federal Trade Commission Act, approved September 26, 1914, are made applicable to the jurisdiction, powers, and duties of the Secretary in administering the provisions of this title and to any person subject to the provisions of this title, whether or not a corporation. Hearings authorized or required under this title shall be conducted by the Secretary of Agriculture or such officer or employee of the Department as he may designate for the purpose. The Secretary may report any violation of any agreement entered into under part 2 of this title to the Attorney General of the United States, who shall cause appropriate proceedings to enforce such agreements to be commenced anl prosecuted in the proper courts of the United States without delay.

(i) The Secretary of Agriculture upon the request of the duly constituted authorities of any State is directed, in order to effectuate the declared policy of this title and in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof, to confer with and hold joint hearings with the duly constituted authorities of any State, and is authorized to cooperate with

such authorities; to accept and utilize, with the consent of the State, such State and local officers and employees as may be necessary; to avail himself of the records and facilities of such authorities; to issue orders (subject to the provisions of Section 8c) complementary to orders or other regulations issued by such authorities; and to make available to such State authorities the records and facilities of the Department of Agriculture: Provided, That information furnished to the Secretary of Agriculture pursuant to Section 8d (1) hereof shall be made available only to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities, and then only upon a written agreement by such authorities that the information so furnished shall be kept confidential by them in a manner similar to that required of Federal officers and employees under the provisions of Section 8d (2) hereof.

Commodities.

Sec. 11. As used in this title, the term "basic agricultural commodity" means wheat, rye, flax, barley, cotton, field corn, grain sorghums, hogs, cattle, rice, potatoes, tobacco, sugar beets and sugar cane, peanuts, and milk and its products, and any regional or market classification, type, or grade thereof; but the Secretary of Agriculture shall exclude from the operation of the provisions of this title, during any period, any such commodity or classification, type, or grade thereof if he finds, upon investigation at any time and after due notice and opportunity for hearing to interested parties, that the conditions of production, marketing, and consumption are such that during such period this title cannot be effectively administered to the end of effectuating the declared policy with respect to such commodity or classification, type, or grade thereof. As used in

this title, the term "potatoes" means all varieties of potatoes included in the species Solanum tuberosum.

Appropriation

Sec. 12. (a) There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $100,000,000 to be available to the Secretary of Agriculture for administrative expenses under this title and for payments authorized to be made under Section 8. Such sum shall remain available until expended.

To enable the Secretary of Agriculture to finance, under such terms and conditions as he may prescribe, surplus reductions and production adjustments with respect to the dairy—and beef-cattle industries, and to carry out any of the purposes described in sub-sections (a) and (b) of this section (12) and to support and balance the markets for the dairy and beef cattle industries, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $200,000,000: Provided, That not more than 60 per centum of such amount shall be used for either of such industries.

(b) In addition to the foregoing, for the purpose of effectuating the declared policy of this title, a sum equal to the proceeds derived from all taxes imposed under this title is hereby appropriated to be available to the Secretary of Agriculture for (1) the acquisition of any agricultural commodity pledged as security for any loan made by any Federal agency, which loan was conditioned upon the borrower agreeing or having agreed to cooperate with a program of production adjustment or marketing adjustment adopted under the authority of this title, and (2) the following purposes under part 2 of this title: Administrative expenses, pay-

ments authorized to be made under Section 8, and refunds on taxes. The Secretary of Agriculture and the Secretary of the Treasury shall jointly estimate from time to time the amounts, in addition to any money available under Sub-section (a), currently required for such purposes; and the Secretary of the Treasury shall, out of any money in the Treasury not otherwise appropriated, advance to the Secretary of Agriculture the amounts so estimated. The amount of any such advance shall be deducted from such tax proceeds as shall subsequently become available under this sub-section.

(c) The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books and books of reference, for contract stenographic reporting services, and for printing and paper in addition to allotments under the existing law. The Secretary of Agriculture shall transfer to the Treasury Department, and is authorized to transfer to other agencies, out of funds available for administrative expenses under this title, such sums as are required to pay administrative expenses incurred and refunds made by such department or agencies in the administration of this title.

Termination of Act.

Sec. 13. This title shall cease to be in effect whenever the President finds and proclaims that the national economic emergency in relation to agriculture has been ended; and pending such time the President shall by proclamation terminate with respect to any basic agricultural commodity such provisions of this title as he finds are not requisite to carrying out the declared policy with respect to such commodity. In the case of sugar beets and sugar cane, the taxes provided by this title shall

cease to be in effect, and the powers vested in the President or in the Secretary of Agriculture shall terminate on December 31, 1937, unless this title ceases to be in effect at an earlier date, as hereinabove provided. The Secretary of Agriculture shall make such investigations and reports thereon to the President as may be necessary to aid him in executing this section.

Separability of Provisions.

Sec. 14. If any provision of this title is declared unconstitutional, or the applicability thereof to any person, circumstance, or commodity is held invalid, the validity of the remainder of this title and the applicability thereof to other persons, circumstances, or commodities shall not be affected thereby.

Supplementary Revenue Provisions

Exemptions and Compensating Taxes

Sec. 15. (a) If at any time the Secretary of Agriculture finds, upon investigation and after due notice and opportunity for hearing to interested parties, that any class of products of any commodity is of such low value, considering the quantity of the commodity used for their manufacture, that the imposition of the processing tax would prevent in whole or in large part the use of the commodity in the manufacture of such products and thereby substantially reduce consumption and increase the surplus of the commodity, then the Secretary of Agriculture shall so certify to the Secretary of the Treasury, specifying whether such result will in his judgment most effectively be prevented by a suspension of the imposition of the processing tax or a refund of the tax paid, with respect to such amount of the

commodity or any product thereof as is used in the manufacture of such products, and thereafter, as shall be specified in such certification, (1) the imposition of the processing tax shall be suspended with respect to such amount of the commodity as is used in the manufacture of such products, and thereafter, as shall be specified in such certification, (2) the imposition of the processing tax shall be suspended with respect to such amount of the commodity as is used in the manufacture of such products until such time as the Secretary of Agriculture, after further investigation and due notice and opportunity for hearing to interested parties, revokes his certification to the Secretary of the Treasury, or (3) the Secretary of the Treasury shall refund (in accordance with the provisions of, to such persons and in such manner as shall be specified in, such certification) the amount of any tax paid (prior to the date of any revocation by the Secretary of Agriculture of his certification to the Secretary of the Treasury, upon further investigation and after due notice and opportunity for hearing to interested parties) under this title with respect to such amount of the commodity or any product thereof as is used after the date of such certification in the manufacture of such products, or shall credit against any tax due and payable under this title the amount of tax which would be refundable. During the period in which any certificate under this section is effective, the provisions of Sub-section (e) of this section shall be suspended with respect to all imported articles of the kind described in such certificate; and notwithstanding the provisions of Section 21, any compensating taxes, which have heretofore, during the period in which any certificate under this section has been effective, becomes due and payable upon imported articles of the kind described in such certificate, shall be refunded by the

Secretary of the Treasury if the same have been paid, or, if the same have not been paid the amount thereof shall be abated. Notwithstanding the provisions of Section 21, the Secretary of the Treasury shall refund or credit any processing tax paid on or before June 12, 1934, with respect to such amount of cotton as was used in the manufacture of large cotton bags (as defined in the Certificate of the Secretary of Agriculture, dated June 12, 1934) between June 13, and July 7, 1934, both inclusive.

(b) No tax shall be required to be paid on the processing of any commodity by or for the producer thereof for consumption by his own family, employees, or household; and the Secretary of Agriculture is authorized, by regulations, to exempt from the payment of the processing tax the processing of commodities by or for the producer thereof for sale by him where, in the judgment of the Secretary, the imposition of a processing tax with respect thereto is unnecessary to effectuate the declared policy.

(b-1) (This deals with tax exempt warrants on rice and is no longer applicable.)

(c) Any person, including any State or Federal organization or institution, delivering any product to any organization for charitable distribution, or use, including any State or Federal welfare organization, for its own use, whether the product is delivered as merchandise, or as a container for merchandise, or otherwise, shall, if such product or the commodity from which processed is under this title subject to tax, be entitled to a refund of the amount of any tax so delivered, or to a credit against any tax due and payable under this title of the amount of tax which would be refundable under this section with respect to such product so delivered: Provider, however, That no tax shall be refunded or credited under this section, unless the person claiming

the refund or credit establishes in accordance with regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury (1) that he has not included the tax in the price of the product so delivered or collected the amount of the tax from the said organization, or (2) that he has repaid, or has agreed in writing to repay, the amount of the tax to the said organization. The word "State" as used in this section shall include a State and any political subdivision thereof.

(d) The Secretary of Agriculture shall ascertain from time to time whether the payment of the processing tax upon any basic agricultural commodity is causing or will cause to the processors or producers thereof disadvantages in competition from competing commodities by reason of excessive shifts in consumption between such commodities or products thereof. If the Secretary of Agriculture finds, after investigation and due notice and opportunity for hearing to interested parties, that such disadvantages in competition exist, or will exist; he shall proclaim such finding. The Secretary shall specify in this proclamation the competing commodity and the compensating rate of tax on the processing thereof necessary to prevent such disadvantages in competition. Thereafter there shall be levied, assessed, and collected upon the first domestic processing of such competing commodity a tax, to be paid by the processor, at the rate specified, until such rate is altered pursuant to a further finding under this section, or the tax or rate thereof on the basic agricultural commodity is altered or terminated. In no case shall the tax imposed upon such competing commodity exceed that imposed per equivalent unit, as determined by the Secretary, upon the basic agricultural commodity.

(e) During any period for which a processing

tax is in effect with respect to any commodity there shall be levied, assessed, collected, and paid upon any article processed or manufactured wholly or partly from such commodity and imported into the United States or any possession thereof to which this title applies, from any foreign country or from any possession of the United States to which this title does not apply, whether imported as merchandise, or as a container of merchandise, or otherwise, a compensating tax equal to the amount of the processing tax in effect with respect to domestic processing of such commodity into such an article at the time of importation: Provided, (1) That in the event any of the provisions of this title have been or are hereafter made applicable to any possession of the United States in the case of any particular commodity or commodities, but not generally, this title, for the purposes of this sub-section, shall be deemed applicable to such possession with respect to such commodity or commodities, but shall not be deemed applicable to such possession with respect to other commodities; and (2) That all taxes collected under this sub-section upon articles coming from the possessions of the United States to which this title does not apply shall not be covered into the general fund of the Treasury of the United States but shall be held as a separate fund and paid into the Treasury of the said possessions, respectively, to be used and expended by the governments thereof for the benefit of agriculture. Such tax shall be paid prior to the release of the article from customs custody or control.

(f) The President, in his discretion, is authorized by proclamation to decree that all or part of the taxes collected from the processing of sugar beets or sugar cane in Puerto Rico, the Territory of Hawaii, the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam (if the provisions of this title are made ap-

plicable thereto), and/or upon the processing in continental United States of sugar produced in, or coming from, said areas, shall not be covered into the general fund of the Treasury of the United States, but shall be held as a separate fund, in the name of the respective area to which related, to be used and expended for the benefit of agricultural and/or paid as rental or benefit payments in connection with the reduction in the acreage, or reduction in the production for market, or both, of sugar beets and/or sugar cane, and/or used and expended for expansion of markets and for removal of surplus agricultural products in such areas, respectively, as the Secretary of Agriculture, with the approval of the President, shall direct.

APPENDIX E

Excerpts Relating to "Passing On" of Taxes From Economic Authorities

I.

Report of the President's Cabinet Committee on the Textile Industry, Senate Document No. 126, 74th Congress, August 20, 1935, pp. 141, 142:

> "Profits or losses for individual processors are, however, in themselves no proof that the processing tax has been passed on. For many years large numbers of establishments have been operating at losses and gradually going out of business. This situation would remain unchanged if all mills passed on the full amount of the processing tax. To argue that losses indicate failure to pass on the processing tax is tantamount to arguing that any loss which a mill may sustain should be ascribed to the processing tax.
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> * * * * *
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> "It is impossible to disentangle the effect of any individual element of cost upon selling price. The processing tax is commingled with other costs, and the competitive forces in the industry tend to operate to bring costs and prices into relation to each other. In this sense, the processing tax is, by and large, passed on to the consumer of the final product."

II.

A report of Administration of the Agricultural Adjustment Act, May, 1933, to February, 1934, Washington, 1934, Government Printing Office, p. 220:

> "The question 'Who pays the processing tax' cannot be answered by a mere examination of

the change in producer, wholesale and retail prices, and the final spread between them * * *."

III.

CORN-HOG ADJUSTMENT; A Handbook for Use in the Corn-hog Adjustment Program, Washington, 1935, Government Printing Office, pp. 77-82:

"It is not easy to make a thorough and accurate analysis of the actual effects of the Processing Tax to date on consumers' expenditures, handlers' margins or return to producers, partially with respect to hogs, because of day-to-day and week-to-week variations in hog marketing, changing trends in consumers' incomes, and fluctuations and other factors affecting market value of farm commodities. It is easy to be misled by changes in the market value of corn and hogs, which are due to other things than the collection of the rocessing Tax."

IV.

XIV ENCYCLOPEDIA OF THE SOCIAL SCIENCES, Article "Taxation," pp. 535-537:

"Because of this necessary dependence upon economic theory in general, beliefs regarding the shifting and incidence of taxation have varied widely with the struggle to formulate a more and more satisfactory explanation of the operation of economic forces. * * * Theoretical conclusions regarding the probable incidence of taxation, such as those above outlined, can be applied to the analysis of a practical problem only with great difficulty. If the conclusions are to be valid, not only must the economic theory be sound and adequate but the conditions surrounding the particular levy under consideration must not depart materially

from the assumptions made in the theoretical analysis. Since such assumptions are highly artificial, it is seldom safe to advance confident pronouncements regarding the incidence of a particular tax. * * * In this field modesty is a becoming virtue. * * * If the amount of verified knowledge concerning the shifting and incidence of taxation is disappointingly slight, the knowledge relating to the more remote influences and effects is even more negligible."

V.

Henry Carter Adams, THE SCIENCE OF FINANCE, New York, 1898, Henry Holt & Co., p. 388:

"THE SHIFTING AND INCIDENCE OF TAXES.—As introductory to an analysis of the way in which taxes work, it is necessary to consider the shifting and incidence of taxes. There is perhaps no question respecting which so many conflicting views are entertained. Professor Seligman, whose ability to review bibliography and classify literature is unexcelled, shows in his chapter upon 'The History of the Doctrine of Incidence' that there are ten distinct groups of opinion entertained by writers upon this subject, and this of itself is adequate to suggest the care with which the student should enter upon its consideration."

VI.

Lionel D. Edie, ECONOMICS; PRINCIPLES AND PROBLEMS, New York, 1926, Thomas Y. Crowell Company, p. 743:

"The basic distinction which underlies all discussion of shifting and incidence is that between margin and surplus. A tax on marginal

industry tends to be shifted fully, but a tax on surplus tends not to be shifted at all. Surplus is not a part of cost of production, but is due to the fact that many concerns can produce at less than the marginal cost, although they sell at the general price fixed by the marginal concern. Yet even this basic distinction must not be taken in any absolute form. The individual peculiarities of each tax require analysis in light of the separate problems which they raise. The whole theory of incidence suffers from the fact that it is only a theory, and lacks adequate statistical verification. The theoretical principles are useful, but should not be taken as adequate guides until statistical verification is more complete than at present."

VII.

Jens P. Jensen, PROBLEMS OF PUBLIC FINANCE, New York, 1924, Thomas Y. Crowell Company, p. 204:

"COMPARISON OF SHIFTABLE AND NON-SHIFTABLE TAXES.—The shifting processes indicated fall far short of accounting for all combinations and possibilities. It is almost impossible to foretell in some cases who will be required to bear a given tax; in others the probability of shifting or non-shifting is strong. In all cases the statesman who imposes a tax which he wishes to lodge in a certain place will have many factors to consider, most of which are very difficult to measure quantitatively. No iron-clad rule can be laid down as to the relative desirability of shiftable as compared with non-shiftable taxes. A more detailed discussion of the advantages and disadvantages of each can best be presented in connection with the consideration of the several taxes in the tax system."

VIII.

Merlin Harold Hunter, OUTLINES OF PUBLIC FINANCE, New York, 1926, Harper & Bros., p. 157:

> "THE RELATION OF SHIFTING TO PRICE.—It would be utterly impossible to trace the burden of every tax until the incidence were definitely determined. In fact, it would be impossible to trace definitely, through all its ramifications of direct and indirect influences the shifting and effects of any tax burden, though it could be much more nearly done in some cases than in others. Some taxes are not shifted at all, others to a very small extent, while the burden of some is lost in the great mass of a consuming population where it is impossible, frequently, even to locate or estimate it."

IX.

A. W. Flux, ECONOMIC PRINCIPLES, An Introductory Study, London, 1923, Methuen & Co., Ltd., p. 264:

> "The problems connected with the determination of the real incidence of various forms of taxation are among the most difficult problems of economics. We shall only consider some of the most general features of this class of problems."

X.

Henry Sidgwick, THE PRINCIPLES OF POLITICAL ECONOMY, London, 1901, MacMillan & Co., Ltd., p. 570:

> "We have now to notice a new element of imperfection and uncertainty in the equalisation of taxation, due to the fact that we can only partially succeed in making the burden

either of 'direct' or 'indirect' taxes fall where we desire: the burden is liable to be transferred to other persons when it is intended to remain where it is first imposed; and, on the other hand, when it is intended to be transferred the process of transference is liable to be tardy and incomplete. Indeed this process is often so complicated and obscure that it is a problem of considerable intricacy and difficulty to ascertain where the burden of a tax actually rests; and it is not even a simple matter to state accurately the general principle for determining the incidence of a tax, supposing all the facts to be known. Thus (*e.g.*) Mill appears to assume as a general principle (Book V. c. iii., Sec. 3) that a tax must be 'considered as paid' by 'those who would be benefited if it were taken off.' But is easy to shew that, in some cases, the whole benefit of remission would be reaped by persons who have not borne any part of the burden of the tax: it is not the extra income that a man would gain if the tax were taken off which gives the true measure of the burden it imposes on him, but rather the extra income that he would now be enjoying if it had never been laid on. But to get even an approximate estimate of this hypothetically determined burden may require a very careful consideration of complex consequences; and the result must often be at the best but partially satisfactory."

XI.

Henry Rogers Seager, PRINCIPLES OF ECONOMICS, New York, 1923, Henry Holt and Company, p. 516:

"It is a fact familiar to every one that taxes are often shifted by those who pay them to others so that ultimate payment may be made by persons ignorant of the taxes' very existence.

This shifting is often very complicated and our treatment of it must be illustrative rather than exhaustive."

XII.

Garver and Hansen, PRINCIPLES OF ECONOMICS, Boston, 1928, Ginn and Company, p. 630:

"The details of the process of shifting are very complex. Here we have only attempted to set forth the most general principles. A tax is not easily shifted (1) when it is universal—when it hits all people and all businesses alike; (2) when it hits net income; (3) when it hits surpluses and does not impinge on margins."

XIII.

M. Slade Kendrick, TAXATION ISSUES, New York, 1933, Harper & Brothers, 102-103, 104-105, 124-125:

"When a tax is paid ultimately by some one other than the original payer, the process of transferring it to the person of final payment is known as shifting. The incidence, or actual pecuniary burden, of a tax, *so far as the matter of its payment is concerned,* rests on this last payer. The collection of a tax entails many effects other than a possible shifting of it to others. And the decision whether to levy a tax or not should include a consideration of these effects as well as of its incidence. It is proposed here, however, to examine only the matter of its shifting—a sufficient task.

"Shifting is a price process. Unless a tax affects a price, it cannot be shifted, for there is no way of transferring its payment to some one else. Price is the medium for the transfer of tax burdens, just as it is the medium for the transfer of other costs. The shifting of a tax, then, is one more chapter in theory of price. Thus its examination runs in terms of those fa-

miliar fundamentals, supply and demand; for only by affecting supply or demand can price be changed.

"The usual analysis of shifting finds the effect of a tax on a price through its effect on the supply of the object taxed. If the supply is changed because of the tax, the price likewise is changed, thus shifting the tax in some degree. If the supply is unaffected by the tax, the price likewise is unaffected by it and no part of the tax is shifted. Thus, in examining the incidence of a tax on land, the inquiry is whether as a result of the tax the supply of land is changed. Commonly the supply of land situation is found to be unaffected by it. Thereby the conclusion is reached that a tax on the site value of land cannot be shifted, but that one on the fertility of the soil or on buildings may be shifted. Again, in examining the incidence of a tax on a commodity, the question is whether the tax through raising the cost of producing the commodity will operate to limit the supply of it produced and thus to increase the price at which it is sold. Throughout both of these analyses and others, the demand schedule is assumed to be unaffected by the tax.

"Possible changes in demand are not considered because the effects of the expenditure of funds exacted by the tax are not examined. And indeed there is, in general, good reason for this omission. The allocation in dollars of any special effect arising from the expenditure of the contribution to the general revenue fund by a given tax object, upon the supply curve or the demand curve of this tax object, may well be a highly artificial task, and in the present state of economic knowledge is probably an impossible one. Therefore, on the whole, the current practice in works on the shifting and

incidence of taxation, of treating public expenditures in a rather vague and general way, and incidence of taxation in a most particular and specific way, and of never permitting the twain to meet, is probably justified."

" * * * It follows directly from the assumption fundamental to current theories of the shifting and incidence of taxation. Thus, if it be granted, as the current theory assumes, that the incidence of a tax is a function of the particular supply-demand relationship of the object upon which the tax is levied, it follows that any factor introduced by the tax which changes this relationship is pertinent to the question of the incidence of this tax. This conclusion is inevitable—to hold otherwise is to say that the incidence of a tax must be determined by the supply-demand relationship of the tax object which existed *before* and not after the imposition of the tax, even though, on account of this tax, this supply-demand relationship has changed. Therefore, if it can be shown that the expenditure of the funds yielded by a tax changes the supply-demand relationship of the object taxed, a consideration of such effects of this expenditure is relevant to the analysis of the incidence of this tax. For it can scarcely be denied that the expenditure of the yield of a tax is a factor introduced by the tax whenever the dependence of a particular expenditure on the particular tax can be traced."

" * * * No single chapter can include all aspects of the problem of tax shifting. Moreover, the *principle* involved can be demonstrated best by an examination of the incidence of a tax on gasoline under conditions of increasing and decreasing cost. This tax is levied in cents per gallon on the sale of gasoline, and the proceeds are commonly used on the roads, with

the result that the roads are being steadily improved as funds from it flow into the public treasury.

"However, in examining the incidence of this tax, it must be confessed at the outset that any examination of the incidence of the gasoline tax that is made here must be based on hypothetical data. The writer has been unable to find information which establishes the precise shape of either the supply curve or the demand curve for gasoline. Does the supply curve slope upward or downward with increases in the quantity of gasoline produced? Is gasoline production subject to the law of diminishing returns or to the law of increasing returns? Is the demand curve for gasoline elastic or inelastic, and in what degree? At each price in a given schedule, what quantity of gasoline will be purchased? Facts such as these are usually missing when analyses of the incidence of taxation are made. Consequently, it is usually necessary to substitute hypotheses for realities and to encounter the hazards incidental to such substitution. But the purpose of this analysis is not so much to establish an absolute truth—if such there be—as to suggest a principle."

XIV.

Sir Josiah Stamp, THE FUNDAMENTAL PRINCIPLES OF TAXATION, London, 1921, Macmillan and Co., Limited, p. 130:

"It is commonly recognized that the incidence of taxation is a very intricate problem, which for its elucidation in many cases requires great powers of abstract economic analysis. When we inquire into the incidence of a tax we usually mean 'by whom is the tax finally paid?' and when we speak of effects, we have in mind some-

thing beyond the incidence—whether the conduct of the prayer on account of the tax is modified in such ways in his economic relationship to others as to alter the equilibrium of business. For example, we should agree that although the importer pays the tea-duty, its final incidence, *via* the wholesaler and retailer, is upon the consumer. But its *effects* may be more far-reaching. Does it diminish the consumption of tea and increase the profits of the cocoa dealers, or does it diminish the demand for children's boots, or is the effect generally diffused over all business? Would a 'turnover' tax have the effect of throwing business into the hands of large firms which controlled various stages of manufacture ordinarily carried on by separate firms, owing to the fact that in the former case the tax would be payable only once, and the aggregate price effect of the latter could therefore be undercut?

"I do not disguise the fact that this subject is the most difficult one of all those dealt with in these lectures, for if it is to be dealt with properly it demands on the part of all some knowledge of economic principles and the habit of economic reasoning."

XV.

David Friday, PROFITS, WAGES AND PRICES, New York, 1920, Harcourt, Brace & Howe, pp. 192, 197:

"Of all the complex forces which cause changes in prices, taxes are among the most potent and direct. If these taxes raise the prices of the goods and services which are sold by the recipients of large incomes and high profits, then they are a mere delusion and might better be paid by the people directly. * * * Where the forces are so many and so complex as are

those which underlie the movements of the price system it is impossible to make convincing statistical proof of causal relations."

XVI.

William J. Shultz, AMERICAN PUBLIC FINANCE AND TAXATION, New York, 1932, Prentice-Hall, Inc., p. 277:

"An individual or a business concern which pays a particular tax may find it possible to reimburse itself in one or both of two ways. It may add the tax, in proportioned fractions, to the prices of the goods or services it sells, and so pass the burden of the tax forward to the consumers of its products or services; or, instead, it may reduce the prices it pays for its purchases—the prices of the raw materials it buys, the rent it pays for land and buildings, the interest it pays on borrowings, the wages it pays to its employes—and so pass the burden of the tax backward to the producers of raw materials, to its landlord, to its banker, or to its employes. The process of passing the burden of the tax either forward or backward from the original payer is called shifting the tax. It may turn out that only one shift of the tax, backward or forward from the original taxpayer, can occur. It is possible that the process of shifting the tax may proceed through a long chain of economic relationships, until there is no immediate connection between the original taxpayer and the individual who eventually bears the burden of the tax. The coming of a tax to ultimate rest upon some individual or class of individuals is called the incidence of the tax.

"The history of doctrines upon the shifting and incidence of taxes is a series of episodic

and often contradictory approaches to the subject, rather than a progressive development of knowledge."

XVII.

Carl C. Plehn, INTRODUCTION TO PUBLIC FINANCE, 4th Ed., New York, 1921, The MacMillan Company, p. 310:

"CHAPTER XI—THE INCIDENCE AND EFFECTS OF TAXATION—Section 1. Definitions—The most difficult problems in taxation come under the heading of this chapter. Many of them are too intricate for an elementary treatise, so little more will be attempted than to state the nature of the problems and to suggest a mode of approach.

"We begin with definitions. An endeavor will be made to confine the term *shifting* to the transference of the tax from the person who first pays it to some other person who reimburses the first payer, or to its passage from one to another in a series of persons. In like manner we shall try to confine the term *incidence* or *final incidence* to the coming home of the tax to its final resting place with some person who cannot shift it any further. So far as it is possible to do so, both terms will be confined to the shifting of the burden of the tax *actually* collected by the government. The problem involved is: out of whose pocket did the money come which went into the public treasury; or, conversely, in whose pocket would that money have remained if it had not been taken by the government?

"These terms, shifting and incidence, are often used much more broadly. For there are burdensome effects of the imposition of a tax which are almost inseparable in thought from the incidence of the tax *per se*. Thus a tax on

liquor dealers may be so high that prices must be raised, custom falls off, and bartenders are discharged or their wages are reduced. Passing over for the moment the question whether the taxes actually paid come out of the pockets of the dealers or out of those of their customers, can we say that any of it came out of the wages of the bartenders? If we do so say, what would be our conclusion if the tax were so high as to kill the trade? Bartenders would receive no wages and yet could not be said to bear any tax for no tax was paid. A very severe burden has fallen on dealers, customers, and employes, yet no tax is paid. Wherever it is possible we shall refer to such incidental burdens as these as *effects* of the tax and regard them as something more or less separable from the questions of shifting and incidence. We may not succeed in this any better than have many other writers who have attacked the same problem. The difficulty is that the *effects* mingle with the incidence and the incidence with the effects. Every tax has a repressive effect, separable in thought but not always in computation from the money burden it involves."

XVIII.

Frederic Mathews, TAXATION AND THE DISTRIBUTION OF WEALTH, New York, 1914, Doubleday-Page & Company, p. 126:

"The indirect method of deriving social revenue by means of the taxation of goods consumed by the society has been adopted by all nations. A policy of such wide and constant application must possess certain advantages. These are expressed clearly and authoritatively in the words of Prince Bismarck, who says: 'I declare myself as essentially favourable to the raising

of all possible revenue by indirect taxes, and I hold direct taxes to be an onerous and awkward makeshift. . . . Indirect taxes, whatever may be said against them theoretically, are in fact less felt. It is difficult for the individual to calculate how much he pays, and how much falls upon his neighbours, but he knows how much income tax he pays. . . . With direct taxes a man is not asked: Can you on a pinch do without your beer; can you smoke less; can you use less light (petroleum) of an evening? No, he must pay the direct tax whether he has money or not, whether in debt or not; and what is worse, distraint follows, and nothing has a greater effect on a man's disposition than execution on account of a few pence which cannot at the moment be extorted from the one who owes them'."

XIX.

David Ames Wells, THE THEORY AND PRACTICE OF TAXATION, New York, 1900, D. Appleton & Company, pp. 569, 597:

"No attempt ought to be made to construct or formulate an economically correct, equitable, and efficient system of taxation which does not give full consideration to the method or extent to which taxes diffuse themselves after their first incidence. On this subject there is a great difference of opinion, which has occasioned, for more than a century, a vast and never-ending discussion on the part of economic writers. All of this discussion, however, has resulted in no generally accepted practical conclusions; has been truthfully characterized by a leading French economist (M. Parieu) as marked in no small part by the 'simplicity of ignorance,' and from a somewhat complete re-

view (recently published) of the conflicting theories advanced by participants one rises with a feeling of weariness and disgust.

"The majority of economists, legislators, and the public generally incline to the opinion that taxes mainly rest where they are laid, and are not shifted or diffused to an extent that requires any recognition in the enactment of statutes for their assessment. Thus, a tax commission of Massachusetts, as the result of their investigations, arrived at the conclusion that 'the tendency of taxes is that they must be paid by the actual persons on whom they are levied.' But a little thought must, however, make clear that unless the advancement of taxes and their final and actual payment are one and the same thing, the Massachusetts statement is simply an evasion of the main question at issue, and that its authors had no intelligent conception of it. A better proposition, and one that may even be regarded as an economic axiom, is that, regarding taxation as a synonym for a force, as it really is, it follows the nature and invariable law of all forces, and distributes itself in the line of inquiry most likely to lead to exact and practical conclusions. But beyond this it lacks value, inasmuch as it fails to embody any suggestions as to the best method of making the involved principle a basis for any general system for correct taxation, inasmuch as 'the line of least resistance' is not a positive factor, and may be and often is so arranged as to make levies on the part of the State under the name of taxation subservient to private rather than public interests. Under such circumstances the question naturally arises, what is the best method for determining, at least, the approximate truth in respect to this vexed subject? * * *

"It is not, however, contended that unequal taxation on competitors of the same class, persons, or things diffuses itself whether such inequality be the result of intention or of defective laws, and their more defective administration. And doubtless one prime reason why economists and others interested have not accepted the law of diffusion of taxes as here given is that they see, as the practical workings of the tax systems they live under, or have become practically familiar with, that taxes in many instances do seem to remain on the person who immediately pays them; and fail to see that such result is due—as in the case of the taxation of large classes of the so-called personal property—to the adoption of a system which does not permit of equality in assessment, and therefore can not be followed by anything of equality in diffusion."

XX.

Edwin R. A. Seligman, THE SHIFTING AND INCIDENCE OF TAXATION, Fourth Edition, New York, 1921, Columbia University Press, p. 219:

"The problem of the shifting of taxation is primarily a question of prices. To solve it is to discover whether, and to what extent, the imposition of a tax effects changes in the revenues and the expenses of individuals; in other words, to ascertain which of the two parties to every economic transaction—the buyer and the seller—bears the burden of the tax. This is obviously not the same as saying that we are dealing only with the relations between the producer and consumer. The vendor may, indeed, be a producer; but he may also be an owner who has acquired the commodity without producing it. Whatever these relations may be, the essence

of the inquiry is: Are prices raised, and if so, to what extent are they raised? Whether we deal with the prices of consumable commodities, of capital, or of labor, this is always the nature of the problem.

"It is readily perceived, therefore, that the theory of the shifting of taxation is a part of the wider theory of value, and that a comprehension of the facts of incidence depends on an application of these laws of value. But the laws of value, as is now well recognized, deal primarily with the more or less subtle changes caused in the supply of, or in the demand for, commodities. Even the cost of production, which plays so fundamental a part in economic progress, affects price through the medium of changes in the relations of supply and demand. Our concern, then, will be not only to mention those general laws of value which are of especial significance to the subject under discussion, but also to call attention to the varying conditions under which these laws work themselves out. In other words, we have to deal not alone with the "pure theory," but also with those phenomena of friction which impede the action of the general laws and are of fundamental importance in any application of the doctrine of the affairs of real life."

XXI.

Harley Leist Lutz, PUBLIC FINANCE, Second Edition, New York, 1929, D. Appleton and Company, p. 317:

"The fact that taxes may, under certain conditions, be shifted is one of the characteristics of taxation that has long been familiar to students and observers of tax systems, and has engaged their speculative interest more, perhaps,

than any other aspect of the subject. A wide range of theories has been formulated to explain this phenomenon. It is unnecessary to review here all of these theories. Among the lot, two general tendencies stand out as most worthy of special mention, in part because each contains an element of truth, and in part because they well represent the extremes to which this kind of theorizing has been carried."

XXII.

C. F. Bastable, PUBLIC FINANCE, Third Edition, London, 1922, Macmillan and Co., Limited, p. 387:

"Our examination of the general conditions that help to determine the true incidence of taxes on the different constituents of income, though necessarily brief, at least makes it plain that the theoretical explanation of the subject is not the simple process sometimes imagined. The movement of a given tax is not invariably in the same direction: its course will be guided by the surrounding circumstances. Without knowing what these are we cannot tell the direction, much less the precise extent, of its incidence. To pretend to say where, *e.g.* a tax on profits will fall, without possessing further data, is as vain as to seek to determine the space traversed by a moving body whose initial velocity and period of movement are both unknown.

"The difficulty of estimating the incidence of taxation is increased by the complementary alterations that take place in the economic system. A change in rent implies changes in the amount and probably in the relations of the other shares in distribution; a rise or fall in the price of one article leads to other changes of price, and we may therefore expect that even in the most precise and determinate cases of

incidence some additional diffused effect will be produced.

"At the best, and after the exercise of the utmost care, there will remain some obscurity as to the exact extent to which shifting takes place, owing chiefly to the difficulty of employing statistical verification. Deduction from general propositions cannot overcome this obstacle, and special vigilance is therefore necessary to avoid errors arising from the want of a check such as the process of verification provides. The earlier theories are so many warnings of the danger of hasty deductions from insufficient premises."

Other authorities are cited in the footnotes to the dissenting opinion of Mr. Justice Stone and Mr. Justice Brandeis in *Indian Motorcycle Company v. U. S.* (1931), 283 U. S. 570, 581.

APPENDIX F

Regulation of Rice Under Agricultural Adjustment Act

By Section 8 of the original Act the Secretary of Agriculture was granted the powers "in order to effectuate the declared policy," (1) to provide for a reduction in the amount of rice produced and for benefit payments to co-operating producers to be paid out of a processing tax on rice; (2) to enter into marketing agreements with processors; and (3) to place under license any or all processors or producers. The original Act was approved too late in 1933 for a program of crop reduction and benefit payments for that year. Consequently, the Secretary exercised his powers in subdivisions (2) and (3) and in October, 1933, executed a marketing agreement with a majority of the millers and simultaneously placed all millers under a license having substantially the same provisions so that all millers, whether they signed the marketing agreement or not, would be subject to the same restrictions. To bring about an increase in the prices, the Secretary fixed both in the agreement and the license the minimum prices to be paid producers for rough rice and also the prices for clean rice sold by millers by providing that clean rice could be sold for not less than the cost of rough rice plus 70¢ per barrel conversion, cost of container and certain other items.

In March, 1934, a direct crop control program for the 1934 season was inaugurated. A new marketing agreement was executed and a new license promulgated, effective March 6, 1934. In the marketing agreement, but significantly not in the license, this crop control program was provided for in Article VIII. That article began:

> "*To control the production* of rough rice in the States of Louisiana, Arkansas and Texas, the Secretary *shall* institute an annual crop con-

trol *program* in the following manner": (Italics ours.)

Provision was made for the Secretary to determine the total rice "which should be produced in said states, and each of them," and to allot acreage to producers who would co-operate in reducing their production. It then provided that each miller on buying rough rice could pay the producer only 60% of the price of the rice and must pay the other 40% to the Secretary, out of which the latter would make benefit payments to co-operating producers. The Secretary determined the total acreage to be planted and barrels to be produced, allotted different amounts to the three States and then through a system of county and State committees broke these down into allotments to individual producers. The base period for Louisiana and Arkansas was the years 1929 through 1933, and for Texas 1931 through 1933. Allotments were made to individual producers, who would agree to the program, of 80% of their average acreage and production in the period 1929-1933 in Louisiana and Arkansas and 78% in 1931-1933 in Texas. *No one who did not produce rice in this base period was given an allotment.* Contracts were executed between the Secretary and the individual eligible producers under which the signing producers agreed to reduce their production on the above basis and agreed to the payment by the millers to the Secretary of the above mentioned 40% of the sale price of their rice.

This 60%-40% program of payments was omitted from the license as the Secretary obviously realized that it could not be enforced against a miller who did not agree to the provision through signing the marketing agreement as the *buying* of rice and *payment* therefor are not in any sense of the word interstate commerce.

Here was a direct system of crop control and re-

duction. If a producer refused to agree to reduce his acreage and to agree to the above 60%-40% program, or if he produced no rice in his base period, he was not eligible for an allotment and the resulting benefit payment. This left the ineligible producer in this unfortunate position:

If he sold his rice to a signatory mill, a party to the marketing agreement, the mill paid him only 60% of the price and sent the other 40% to the Secretary, but this producer received no benefit payment and lost his 40%. This severely limited his market as the great majority of the mills had signed the marketing agreement, and he was forced to sell his rice to non-signatory mills. Thus as a practical matter, an eligible producer was forced to agree to the Secretary's program, and the ineligible producer was given the not easy choice of abandoning his undoubtedly constitutional right to grow rice without such an impossible burden or become a rice "bootlegger," and many *a fortiori* chose the latter course.

Under this marketing agreement and license the Secretary pursued the same course of fixing the prices for rough rice and for clean rice.

The March, 1934, agreement and license were succeeded by amendments of July 21, 1934, which carried forward substantially the same plan and which amounted in fact to a complete rewriting of the agreement and license. For the information of the court we have included a copy thereof in Annex B.

The success of this program, with its fixing of prices for rough and clean rice, depended on its being observed by all mills, both those signing the marketing agreement as well as those subject only to the license. It is well known in the rice industry that the non-signatory mills took the position that they were not bound by the license and did not have to comply with its price fixing provisions. The Secretary thereupon in December, 1934, and Jan-

uary, 1935, made an attempt to enforce the license against non-signatory mills by hearings to revoke their licenses (as for example, the procedure set forth in the affidavit of Homer L. Bruce, R. 64), but this was slow and cumbersome and we know of no case in which any mill's license was actually forfeited and the mill thereafter prosecuted for operating without a license.

As a result, this entire program of direct action by Federal government to control rice production was abandoned, and the processing tax route was then chosen to arrive at the same destination—crop reduction and control—for the 1935 crop. On March 18, 1935, an amendment to the Act was approved placing the tax of 1c per pound or $1.62 per barrel on rice (Public Act No. 20, 74th Congress). Section 9 of the original Act was amended by providing that:

> "in the case of rice, the Secretary of Agriculture shall, before April 1, 1935, proclaim that rental or benefit payments are to be made with respect thereto, and the processing tax shall be in effect on and after April 1, 1935."

Although the initial rate was fixed at 1c per pound, the Secretary was given the power to raise, lower or abolish it.

The Secretary made the proclamation above referred to and under Section 8(1) inaugurated the program of crop reduction for 1935, the details of which are set forth in Exhibits A and B to the Bill of Complaint, R. 27-48. Substantially the same program as that for 1934 was adopted—only producers being eligible for benefit payments that grew rice in the respective base periods who would agree to reduce their production, the benefit payments being made out of the proceeds of the processing tax. This program has been, and is still being, carried out by the Secretary and the processing taxes

are for the purpose of making benefit payments to co-operating producers.

In a word, the Federal government, having found that a direct control of rice production through marketing agreements and licenses could not be accomplished satisfactorily, is now seeking to accomplish the same end indirectly through the processing tax.

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL ADJUSTMENT ADMINISTRATION

COMPILATION OF AGRICULTURAL ADJUSTMENT ACT AS AMENDED

AND

ACTS RELATING THERETO

AS OF AUGUST 27, 1935

COMPILED UNDER THE DIRECTION OF
THE SOLICITOR

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1935

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COMPILATION OF AGRICULTURAL ADJUSTMENT ACT, AS AMENDED, AND ACTS RELATING THERETO

AGRICULTURAL ADJUSTMENT ACT, AS AMENDED, AS OF AUGUST 27, 1935 [1]

AN ACT

To relieve the existing national economic emergency by increasing agricultural purchasing power to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—AGRICULTURAL ADJUSTMENT

DECLARATION OF EMERGENCY

That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities, and render imperative the immediate enactment of title I of this Act.

DECLARATION OF POLICY

SEC. 2. It is hereby declared to be the policy of Congress—

(1) [To] *Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to* establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farm-

[1] Throughout the text of this document italics are used to indicate matter added by the 74th Congress by way of amendment to the Agricultural Adjustment Act, Public, No. 10, 73d Congress, 48 Stat. 31 (1933), as previously amended. In instances where the language was stricken or changed, heavy black brackets are used to indicate the deleted matter.

ers buy, equivalent to the purchasing power of agricultural commodities in the base period; *and, in the case of all commodities for which the base period is the pre-war period, August 1909 to July 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during the base period.* The base period in the case of all agricultural commodities except tobacco *and potatoes* shall be the prewar period, August 1909–July 1914. In the case of tobacco *and potatoes*, the base period shall be the postwar period, August 1919–July 1929.

As amended by sec. 1 (a) and sec. 62 of Public, No. 320, 74th Congress, approved August 24, 1935, entitled "An Act to amend the Agricultural Adjustment Act, and for other purposes". Sec. 62 adds the words "and potatoes".

[(2) To approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets.

(3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the prewar period, August 1909–July 1914.]

(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section.

As amended by sec. 1(b) of Public, No. 320, 74th Congress, approved August 24, 1935.

PART I—COTTON OPTION CONTRACTS

SEC. 3. The Federal Farm Board and all departments and other agencies of the Government, not including the Federal intermediate credit banks, are hereby directed—

(a) To sell to the Secretary of Agriculture at such price as may be agreed upon, not in excess of the market price, all cotton now owned by them.

(b) To take such action and to make such settlements as are necessary in order to acquire full legal title to all cotton on which money has been loaned or advanced by any department or agency of the United States, including futures contracts for cotton or which is held as collateral for loans or advances and to make final settlement of such loans and advances as follows:

(1) In making such settlements with regard to cotton, including operations to which such cotton is related, such cotton shall be taken

over by all such departments or agencies other than the Secretary of Agriculture at a price or sum equal to the amounts directly or indirectly loaned or advanced thereon and outstanding, including loans by the Government department or agency and any loans senior thereto, plus any sums required to adjust advances to growers to 90 per centum of the value of their cotton at the date of its delivery in the first instance as collateral to the department or agency involved, such sums to be computed by subtracting the total amount already advanced to growers on account of pools of which such cotton was a part, from 90 per centum of the value of the cotton to be taken over as of the time of such delivery as collateral, plus unpaid accrued carrying charges and operating costs on such cotton, less, however, any existing assets of the borrower derived from net income, earnings, or profits arising from such cotton, and from operations to which such cotton is related; all as determined by the department or agency making the settlement.

(2) The Secretary of Agriculture shall make settlements with respect to cotton held as collateral for loans or advances made by him on such terms as in his judgment may be deemed advisable, and to carry out the provisions of this section, is authorized to indemnify or furnish bonds to warehousemen for lost warehouse receipts and to pay the premiums on such bonds.

When full legal title to the cotton referred to in (b) has been acquired, it shall be sold to the Secretary of Agriculture for the purposes of this section, in the same manner as provided in (a).

(c) The Secretary of Agriculture is hereby authorized to purchase the cotton specified in paragraphs (a) and (b).

SEC. 4. (a) The Secretary of Agriculture shall have authority to borrow money upon all cotton in his possession or control and may, at his discretion, deposit as collateral for such loans the warehouse receipts for such cotton.

(b) The Secretary of the Treasury is authorized to advance, in his discretion, out of any money in the Treasury not otherwise appropriated, the sum of $100,000,000 [to be available, until March 1, 1936], to the Secretary of Agriculture, for paying off any debt or debts which may have been or may be incurred by the Secretary of Agriculture and discharging any lien or liens which may have arisen or may arise pursuant to part 1 of this title, for protecting title to any cotton which may have been or may be acquired by the Secretary of Agriculture under authority of part 1 of this title, and for paying any expenses (including, but not limited to, warehouse charges, insurance, salaries, interest, costs, and commissions) incident to carrying, handling, insuring, and marketing of said cotton and for the purposes described in subsection (e) of this section. *This sum shall be available until the cotton acquired by the Secretary of Agriculture under authority of Title 1 of this Act, including cotton futures, shall have been finally marketed by any agency which may have been or may be established by the Secretary of Agriculture for the handling, carrying, insuring, or marketing of any cotton acquired by the Secretary of Agriculture.*

As amended by sec. 35 of Public, No. 320, 74th Congress, approved August 24, 1935.

(c) The funds authorized by subsection (b) of this section shall be made available to the Secretary of Agriculture from time to time upon his request and with the approval of the Secretary of the Treasury. Each such request shall be accompanied by a statement showing by weight and average grade and staple the quantity of cotton held by the Secretary of Agriculture and the approximate aggregate market value thereof.

(d) It is the purpose of subsections (b) and (c) to provide an alternative method to that provided by subsection (a), for enabling the Secretary of Agriculture to finance the acquisition, carrying, handling, insuring, and marketing of cotton acquired by him under authority of section 3 of this Act. The Secretary of Agriculture may at his discretion make use of either or both of the methods provided in this section for obtaining funds for the purposes hereinabove enumerated.

(e) The Secretary of Agriculture is authorized to use in his discretion any funds obtained by him pursuant to the provisions of subsection (a) or (b) of this section or of section 5 for making advances to any agency which may have been or may be established by the Secretary of Agriculture for the handling, carrying, insuring, or marketing of any cotton acquired by the Secretary of Agriculture, to enable any such agency to perform, exercise, and discharge any of the duties, privileges, and functions which such agency may be authorized to perform, exercise, or discharge.

(f) The proceeds derived from the sale of cotton shall be held for the Secretary of Agriculture by the Treasurer of the United States in a special deposit account and shall be used by the Secretary of Agriculture to discharge the obligations incurred under authority of part 1 of this title. Whenever any cotton shall be marketed the net proceeds (after discharge of other obligations incurred with respect thereto) derived from the sale thereof shall be used, to the extent required, to reimburse the Treasury for such portion of the funds hereby provided for as shall have been used, which shall be covered into the Treasury as a miscellaneous receipt. If when all of the cotton acquired by the Secretary of Agriculture shall have been marketed and all of the obligations incurred with respect to such cotton shall have been discharged, and the Treasury reimbursed for any and all sums which may have been advanced pursuant to subsection (b), there shall remain any balance in the hands of the Secretary of Agriculture, such balance shall be covered into the Treasury as miscellaneous receipts.

The word "obligation" when used in this section shall include (without being limited to) administrative expenses, warehouse charges, insurance, salaries, interest, costs, commissions, and other expenses incident to handling, carrying, insuring, and marketing of said cotton.

Added by sec. 36 of Public, No. 320, 74th Congress, approved August 24, 1935.

SEC. 5. The Reconstruction Finance Corporation is hereby authorized and directed to advance money and to make loans to the Secretary of Agriculture for the purpose of providing funds with which to enable the Secretary of Agriculture to perform the duties and functions which he is directed or authorized to perform under

the provisions of part 1 of this title, provided such advance of money or such loans shall not be for amounts in excess of the market value of the cotton, or the interest of the Secretary of Agriculture in the cotton, against which the advance or loan is to be made at the time such advance or loan may be applied for by the Secretary of Agriculture, plus costs, expenses, and commissions incurred incidental to handling, carrying, and marketing of such cotton. The Secretary of Agriculture shall not be required to pledge or deposit warehouse receipts or other evidences of title to cotton as security for any advance of money or loans made pursuant hereto, but it shall be sufficient if the Secretary shall give to the Reconstruction Finance Corporation a written statement showing the quantity of cotton by weight and the average grade and staple of the cotton against which the advance or loan is to be made. The amount of notes, bonds, debentures, and other obligations which the Reconstruction Finance Corporation is authorized and empowered to issue and to have outstanding at any one time under existing law is hereby increased by an amount sufficient to carry out the provisions of this section.

[SEC. 6. (a) The Secretary of Agriculture is hereby authorized to enter into option contracts with the producers of cotton to sell to any such producer an amount of cotton to be agreed upon not in excess of the amount of reduction in production of cotton by such producer below the amount produced by him in the preceding crop year, in all cases where such producer agrees in writing to reduce the amount of cotton produced by him in 1933, below his production in the previous year, by not less than 30 per centum, without increase in commercial fertilization per acre.

(b) To any such producer so agreeing to reduce production the Secretary of Agriculture shall deliver a nontransferable option contract agreeing to sell to said producer an amount, equivalent to the amount of his agreed reduction, of the cotton in the possession and control of the Secretary.

(c) The producer is to have the option to buy said cotton at the average price paid by the Secretary for the cotton procured under section 3, and is to have the right at any time up to January 1, 1934, to exercise his option, upon proof that he has complied with his contract and with all the rules and regulations of the Secretary of Agriculture with respect thereto, by taking said cotton upon payment by him of his option price and all actual carrying charges on such cotton; or the Secretary may sell such cotton for the account of such producer, paying him the excess of the market price at the date of sale over the average price above referred to after deducting all actual and necessary carrying charges: *Provided*, That in no event shall the producer be held responsible or liable for financial loss incurred in the holding of such cotton or on account of the carrying charges therein: *Provided further*, That such agreement to curtail cotton production shall contain a further provision that such cotton producer shall not use the land taken out of cotton production for the production for sale, directly or indirectly, of any other nationally produced agricultural commodity or product.

(d) If any cotton held by the Secretary of Agriculture is not disposed of under subsection (c), the Secretary is authorized to enter into similar option contracts with respect to such cotton, con-

ditioned upon a like reduction of production in 1934, and permitting the producer in each case to exercise his option at any time up to January 1, 1935.]

Repealed by sec. 34 of Public, No. 320, 74th Congress, approved August 24, 1935.

[SEC. 7. The Secretary shall sell the cotton held by him at his discretion, but subject to the foregoing provisions: *Provided*, That he shall dispose of all cotton held by him by March 1, 1936: *Provided further*, That notwithstanding the provisions of section 6, the Secretary shall have authority to enter into option contracts with producers of cotton to sell to the producers such cotton held by him, in such amounts and at such prices and upon such terms and conditions as the Secretary may deem advisable, in combination with rental or benefit payments provided for in part 2 of this title.

Notwithstanding any provisions of existing law, the Secretary of Agriculture may in the administration of the Agricultural Adjustment Act make public such information as he deems necessary in order to effectuate the purposes of such Act.]

SEC. 7. The Secretary shall sell cotton held or acquired by him pursuant to authority of this Act at his discretion subject only to the conditions and limitations of Title 1 of this Act: Provided, That the Secretary shall have authority to enter into option contracts with producers of cotton to sell to or for the producers such cotton held and/or acquired by him in such amounts and at such prices and upon such terms and conditions as he, the Secretary, may deem advisable, and such option contracts may be transferred or assigned in such manner as the Secretary of Agriculture may prescribe.

Notwithstanding any provisions contained in option contracts heretofore issued and/or any provision of law, assignments made prior to January 11, 1934, of option contracts exercised prior to January 18, 1934, shall be deemed valid upon determination by the Secretary that such assignment was an assignment in good faith of the full interest in such contract and for full value and is free from evidence of fraud or speculation by the assignee.

Notwithstanding any provision of existing law, the Secretary of Agriculture may, in the administration of the Agricultural Adjustment Act, make public such information as he deems necessary in order to effectuate the purposes of such Act.

As amended by sec. 33 of Public, No. 320, 74th Congress, approved August 24, 1935.

PART 2—COMMODITY BENEFITS

GENERAL POWERS

SEC. 8. [In order to effectuate the declared policy, the Secretary of Agriculture shall have power—

(1) To provide for reduction in the acreage or reduction in the production for market, or both, of any basic agricultural commodity, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith or upon that part of the production of any basic agricultural commodity required for domestic consumption, in such amounts as

the Secretary deems fair and reasonable, to be paid out of any moneys available for such payments; and, in the case of sugar beets or sugarcane, in the event that it shall be established to the satisfaction of the Secretary of Agriculture that returns to growers or producers, under the contracts for the 1933–1934 crop of sugar beets or sugarcane, entered into by and between the processors and producers and/or growers thereof, were reduced by reason of the payment of the processing tax, and/or the corresponding floor stocks tax, on sugar beets or sugarcane, in addition to the foregoing rental or benefit payments, to make such payments, representing in whole or in part such tax, as the Secretary deems fair and reasonable, to producers who agree, or have agreed, to participate in the program for reduction in the acreage or reduction in the production for market, or both, of sugar beets or sugarcane. *In the case of rice, the Secretary, in exercising the discretion conferred upon him by this section to provide for rental or benefit payments, is directed to provide in any agreement entered into by him with any rice producer pursuant to this section, upon such terms and conditions as the Secretary determines will best effectuate the declared policy of the Act, that the producer may pledge for production credit in whole or in part his right to any rental or benefit payments under the terms of such agreement and that such producer may designate therein a payee to receive such rental or benefit payments.* Under regulations of the Secretary of Agriculture requiring adequate facilities for the storage of any non-perishable agricultural commodity on the farm, inspection and measurement of any such commodity so stored, and the locking and sealing thereof, and such other regulations as may be prescribed by the Secretary of Agriculture for the protection of such commodity and for the marketing thereof, a reasonable percentage of any benefit payment may be advanced on any such commodity so stored. In any such case, such deduction may be made from the amount of the benefit payment as the Secretary of Agriculture determines will reasonably compensate for the cost of inspection and sealing, but no deduction may be made for interest.]

As amended by sec. 7 of Public, No. 20, 74th Congress, approved March 18, 1935.

(1) *Whenever the Secretary of Agriculture has reason to believe that:*

(a) *The current average farm price for any basic agricultural commodity is less than the fair exchange value thereof, or the average farm price of such commodity is likely to be less than the fair exchange value thereof for the period in which the production of such commodity during the current or next succeeding marketing year is normally marketed, and*

(b) *The conditions of and factors relating to the production, marketing, and consumption of such commodity are such that the exercise of any one or more of the powers conferred upon the Secretary under subsections (2) and (3) of this section would tend to effectuate the declared policy of this title,*

he shall cause an immediate investigation to be made to determine such facts. If, upon the basis of such investigation, the Secretary finds the existence of such facts, he shall proclaim such determination

and shall exercise such one or more of the powers conferred upon him under subsections (2) and (3) of this section as he finds, upon the basis of an investigation, administratively practicable and best calculated to effectuate the declared policy of this title.

(2) Subject to the provisions of subsection (1) of this section, the Secretary of Agriculture shall provide, through agreements with producers or by other voluntary methods,

(a) For such adjustment in the acreage or in the production for market, or both, of any basic agricultural commodity, as he finds, upon the basis of the investigation made pursuant to subsection (1) of this section, will tend to effectuate the declared policy of this title, and to make such adjustment program practicable to operate and administer, and

(b) For rental or benefit payments in connection with such agreements or methods in such amounts as he finds, upon the basis of such investigation, to be fair and reasonable and best calculated to effectuate the declared policy of this title and to make such program practicable to operate and administer, to be paid out of any moneys available for such payments or, subject to the consent of the producer, to be made in quantities of one or more basic agricultural commodities acquired by the Secretary pursuant to this title.

(3) Subject to the provisions of subsection (1) of this section, the Secretary of Agriculture shall make payments, out of any moneys available for such payments, in such amounts as he finds, upon the basis of the investigation made pursuant to subsection (1) of this section, to be fair and reasonable and best calculated to effectuate the declared policy of this title:

(a) To remove from the normal channels of trade and commerce quantities of any basic agricultural commodity or product thereof;

(b) To expand domestic or foreign markets for any basic agricultural commodity or product thereof;

(c) In connection with the production of that part of any basic agricultural commodity which is required for domestic consumption.

(4) Whenever, during a period during which any of the powers conferred in subsection (2) or (3) is being exercised, the Secretary of Agriculture has reason to believe that, with respect to any basic agricultural commodity:

(a) The current average farm price for such commodity is not less than the fair exchange value thereof, and the average farm price for such commodity is not likely to be less than the fair exchange value thereof for the period in which the production of such commodity during the current or next succeeding marketing year is normally marketed, or

(b) The conditions of and factors relating to the production, marketing, and consumption of such commodity are such that none of the powers conferred in subsections (2) and (3), and no combination of such powers, would, if exercised, tend to effectuate the declared policy of this title,

he shall cause an immediate investigation to be made to determine such facts. If, upon the basis of such investigation, the Secretary finds the existence of such facts, he shall proclaim such

determination, and shall not exercise any of such powers with respect to such commodity after the end of the marketing year current at the time when such proclamation is made and prior to a new proclamation under subsection (1) of this section, except insofar as the exercise of such power is necessary to carry out obligations of the Secretary assumed, prior to the date of such proclamation made pursuant to this subsection, in connection with the exercise of any of the powers conferred upon him under subsections (2) or (3) of this section.

(5) In the course of any investigation required to be made under subsection (1) or subsection (4) of this section, the Secretary of Agriculture shall hold one or more hearings, and give due notice and opportunity for interested parties to be heard.

(6) No payment under this title made in an agricultural commodity acquired by the Secretary in pursuance of this title shall be made in a commodity other than that in respect of which the payment is being made. For the purposes of this subsection, hogs and field corn may be considered as one commodity.

(7) In the case of sugar beets or sugarcane, in the event that it shall be established to the satisfaction of the Secretary of Agriculture that returns to growers or producers, under the contracts for the 1933–1934 crop of sugar beets or sugarcane, entered into by and between the processors and producers and/or growers thereof, were reduced by reason of the payment of the processing tax, and/or the corresponding floor stocks tax, on sugar beets or sugarcane, in addition to the foregoing rental or benefit payments, the Secretary of Agriculture shall make such payments, representing in whole or in part such tax, as the Secretary deems fair and reasonable, to producers who agree, or have agreed, to participate in the program for reduction in the acreage or reduction in the production for market, or both, of sugar beets or sugarcane.

(8) In the case of rice, the Secretary of Agriculture, in exercising the power conferred upon him by subsection (2) of this section to provide for rental or benefit payments, is directed to provide in any agreement entered into by him with any rice producer pursuant to such subsection, upon such terms and conditions as the Secretary determines will best effectuate the declared policy of this title, that the producer may pledge for production credit in whole or in part his right to any rental or benefit payments under the terms of such agreement and that such producer may designate therein a payee to receive such rental or benefit payments.

(9) Under regulations of the Secretary of Agriculture requiring adequate facilities for the storage of any nonperishable agricultural commodity on the farm, inspection and measurement of any such commodity so stored, and the locking and sealing thereof, and such other regulations as may be prescribed by the Secretary of Agriculture for the protection of such commodity and for the marketing thereof, a reasonable percentage of any benefit payment may be advanced on any such commodity so stored. In any such case, such deduction may be made from the amount of the benefit payment as the Secretary of Agriculture determines will reasonably compensate for the cost of inspection and sealing but no deduction may be made for interest.

Added by sec. 2 of Public, No. 320, 74th Congress, approved August 24, 1935.

SEC. 8a. (1) Having due regard to the welfare of domestic producers and to the protection of domestic consumers and to a just relation between the prices received by domestic producers and the prices paid by domestic consumers, the Secretary of Agriculture may, in order to effectuate the declared policy of this Act, from time to time, by orders or regulations—

(A) (i) Forbid processors [handlers], *persons engaged in the handling* of sugar, and others from importing sugar into continental United States for consumption, or which shall be consumed, therein, and/or from transporting to, receiving in, processing or marketing in, continental United States, and/or from processing in any area to which the provisions of this title with respect to sugar beets and sugarcane may be made applicable, for consumption in continental United States, sugar from the Virgin Islands, the Philippine Islands, the Canal Zone, American Samoa, the island of Guam, and from foreign countries, including Cuba, respectively, in excess of quotas fixed by the Secretary of Agriculture, for any calendar year, based on average quantities therefrom brought into or imported into continental United States for consumption, or which was actually consumed, therein, during such three years, respectively, in the years 1925–1933, inclusive, as the Secretary of Agriculture may, from time to time, determine to be the most representative respective three years, adjusted, together with the quotas established pursuant to paragraph (ii), (in such manner as the Secretary shall determine) to the remainder of the total estimated consumption requirements of sugar for continental United States, determined pursuant to subsection (2) of this section, after deducting therefrom the quotas for continental United States, provided for by paragraph (B) of this subsection: *Provided, however,* That in such quotas there may be included, in the case of the Virgin Islands, the Philippine Islands, the Canal Zone, American Samoa, and the island of Guam, direct-consumption sugar up to an amount not exceeding the respective quantities of direct-consumption sugar therefrom brought into or imported into continental United States for consumption, or which was actually consumed, therein during the year 1931, 1932, or 1933, whichever is greater, and in the case of Cuba, direct-consumption sugar up to an amount not exceeding 22 per centum of the quota established for Cuba: *And provided further,* That any imported sugar, with respect to which a drawback of duty is allowed, under the provisions of section 313 of the Tariff Act of 1930, shall not be charged against the quota established by the Secretary of Agriculture hereunder for the country from which such sugar was imported, and the Secretary of Agriculture may, by orders or regulations, readjust any quota subject to the provisions of this section, except quotas fixed by paragraph (B) of this subsection; and may allot (or appoint an officer, including the Governor General of the Philippine Islands for that area, in his name to allot) any quota, and readjust any such allotment, from time to time, among the processors [handlers], *persons engaged in the handling* of sugar and others; and/or

(ii) Forbid processors [handlers], *persons engaged in the handling* of sugar, and others from transporting to, receiving in, processing or marketing in, continental United States, and/or from processing in the Territory of Hawaii or Puerto Rico for consumption

in continental United States, sugar from the Territory of Hawaii or Puerto Rico, in excess of quotas fixed by the Secretary of Agriculture, for any calendar year, based on average quantities therefrom brought into continental United States for consumption, or which was actually consumed, therein during such three years, respectively, in the years 1925–1933, inclusive, as the Secretary of Agriculture may, from time to time, determine to be the most representative respective three years, adjusted, together with the quotas established pursuant to paragraph (i), (in such manner as the Secretary shall determine) to the remainder of the total estimated consumption requirements of sugar for continental United States, determined pursuant to subsection (2) of this section, after deducting therefrom the quotas for continental United States, provided for by paragraph (B) of this subsection: *Provided, however*, That in such quotas there may be included direct-consumption sugar up to an amount not exceeding the respective quantities of direct-consumption sugar therefrom brought into continental United States for consumption, or which was actually consumed, therein during the year 1931, 1932, or 1933, whichever is greater, and the Secretary of Agriculture may, by orders or regulations, allot such quotas and readjust any such allotment, from time to time, among the processors [handlers], *persons engaged in the handling* of sugar, and others; and/or

(B) Forbid processors [handlers], *persons engaged in the handling* of sugar, and others from marketing in, or in the current of [or in competition with,] or so as *directly* to burden, obstruct, or [in any way] affect, interstate or foreign commerce, sugar manufactured from sugar beets and/or sugarcane, produced in the continental United States beet-sugar-producing area, the States of Louisiana and Florida, and any other State or States in excess of the following quotas, for any calendar year, except as provided for in subsection (2) of this section: United States beet-sugar area, one million five hundred and fifty thousand short tons raw value; the States of Louisiana and Florida, except as may be provided under paragraph (C) of this subsection, two hundred and sixty thousand short tons raw value; and the Secretary of Agriculture may, by orders or regulations, allot such quotas and readjust any such allotment, from time to time, among the processors [handlers], *persons engaged in the handling* of sugar, and others; and/or

As amended by sec. 8 of Public, No. 320, 74th Congress, approved August 24, 1935.

(C) For any calendar year, determine the quota, but not less than the quota provided in paragraph (B), for any area producing less than two hundred and fifty thousand long tons of sugar raw value during the next preceding calendar year; and/or

(D) Establish a separate quota or quotas for edible molasses and/or sirup of cane juice produced in continental United States, in addition to, and/or for edible molasses, sirups, and sugar mixtures produced in any other area or areas to which this title relates, as part of or in addition to, the quotas established pursuant to paragraphs (A) to (C), inclusive, of this subsection, for use as such and not for the extraction of sugar.

(2) (A) The consumption requirements of sugar for continental United States, for the calendar year 1934, and for each succeeding

calendar year, shall be determined by the Secretary of Agriculture from available statistics of the Department of Agriculture. The consumption requirements so determined shall, at such intervals as the Secretary finds necessary to effectuate the declared policy and the purposes of this Act, be adjusted by him to meet the actual requirements of the consumer as determined by the Secretary.

(B) In the event that available statistics of the Department of Agriculture during the course of any calendar year indicate that the consumption requirements of sugar for continental United States for such calendar year will exceed the amount of the consumption requirements determined for that year, the Secretary of Agriculture may prorate such estimated excess amount on the basis of the respective quotas determined by and pursuant to subsection (1) of this section: *Provided, however*, That for each calendar year there shall be allotted to continental United States not less than 30 per centum of any amount of consumption requirements therefor above six million four hundred and fifty-two thousand short tons raw value.

(C) In the event that available statistics of the Department of Agriculture during the course of any calendar year indicate that the consumption requirements of sugar for continental United States for such year will be less than the amount of the consumption requirements determined for that year, the amount of such deficiency may be proportionately deducted from the respective quotas determined by and pursuant to paragraph (A) of subsection (1) of this section.

(D) If, during any calendar year, any producing area is unable to produce and deliver its full quota of sugar, the Secretary of Agriculture may prorate this deficiency among the other areas on the basis of their respective quotas and ability to supply the deficiency.

(E) Notwithstanding the provisions of paragraphs (A) to (C), inclusive, of subsection (1) of this section, the Secretary of Agriculture may, in order to effectuate the declared policy of this Act, from time to time, by orders or regulations, deduct from the quotas for production, importing, receiving, and/or marketing, and/or from the allotments thereof, established pursuant to said paragraphs, in any given year, an amount for each year, respectively, representing the surplus stocks of sugar produced in that area, or a portion of the total surplus stocks of sugar produced in that area, in whole or in part, which may have accumulated in the year next preceding, over and above the quotas established for such year.

(3) In order more fully to effectuate the declared policy of this Act, as set forth in its declaration of policy, and to insure the equitable division between producers and/or growers and/or the processors of sugar beets or sugarcane of any of the proceeds which may be derived from the growing, processing and/or marketing of such sugar beets or sugarcane, and the processing and/or marketing of the products and byproducts thereof, all agreements authorized by this Act relating to sugar beets, sugarcane, or the products thereof may contain provisions which will limit or regulate child labor, and will fix minimum wages for workers or growers employed by the producers and/or processors of sugar beets and/or sugarcane who are parties to such agreements; and the Secretary, upon the request of any producer, or grower, or worker, or of any association of producers, or growers, or workers, or of any processor, of sugar beets

or sugarcane, is hereby authorized to adjudicate any dispute as to any of the terms under which sugar beets or sugarcane are grown or are to be grown and/or marketed, and the sugar and byproducts thereof are to be marketed. The decision and any determination of the Secretary shall be final.

(4) Any person willfully violating any order or regulation of the Secretary of Agriculture issued under this section shall, upon conviction, be punished by a fine of not more than $100.

(5) Any person willfully exceeding any quota or allotment fixed for him under this title by the Secretary of Agriculture, and any other person knowingly participating, or aiding, in the exceeding of said quota or allotment, shall forfeit to the United States a sum equal to three times the current market value of such excess, which forfeiture shall be recoverable in a civil suit brought in the name of the United States.

(6) The several district courts of the United States are hereby vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, the provisions of this section, or of any order, regulation, *or* agreement, [or license] heretofore or hereafter made or issued pursuant to this title, in any proceeding now pending or hereafter brought in said courts.

As amended by sec. 9 of Public, No. 320, 74th Congress, approved August 24, 1935.

(7) Upon the request of the Secretary of Agriculture, it shall be the duty of the several district attorneys of the United States, in their respective districts, under the directions of the Attorney General, to institute proceedings to enforce the remedies and to collect the forfeitures provided for in, or pursuant to, this title. *Whenever the Secretary, or such officer or employee of the Department of Agriculture as he may designate for the purpose, has reason to believe that any handler has violated, or is violating, the provisions of any order or amendment thereto issued pursuant to this title, the Secretary shall have power to institute an investigation and, after due notice to such handler, to conduct a hearing in order to determine the facts for the purpose of referring the matter to the Attorney General for appropriate action.*

As amended by sec. 10 of Public, No. 320, 74th Congress, approved August 24, 1935.

(8) The remedies provided for in this section shall be in addition to, and not exclusive of, any of the remedies or penalties provided for elsewhere in this title or now or hereafter existing at law or in equity.

(9) The term " person " as used in this title includes an individual, partnership, corporation, association, and any other business unit.

[(2)] *Sec. 8b.* [After due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, in the current of or in competition with, or so as to burden, obstruct, or in any way affect, interstate or foreign commerce.] *In order to effectuate the declared policy of this title, the Secretary of Agriculture shall have the power, after due notice and opportunity for hearing, to enter into market-*

ing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, only with respect to such handling as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful: *Provided*, That no such agreement shall remain in force after the termination of this Act. For the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under section 5 of the Reconstruction Finance Corporation Act. Such loans shall not be in excess of such amounts as may be authorized by the agreements.

As amended by sec. 4 of Public No. 320, 74th Congress, approved August 24, 1935.

[(3) To issue licenses permitting processors, associations of producers, and others to engage in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof, or any competing commodity or product thereof. Such licenses shall be subject to such terms and conditions, not in conflict with existing Acts of Congress or regulations pursuant thereto, as may be necessary to eliminate unfair practices or charges that prevent or tend to prevent the effectuation of the declared policy and the restoration of normal economic conditions in the marketing of such commodities or products and the financing thereof. The Secretary of Agriculture may suspend or revoke any such license, after due notice and opportunity for hearing, for violations of the terms or conditions thereof. Any order of the Secretary suspending or revoking any such license shall be final if in accordance with law. Any such person engaged in such handling without a license as required by the Secretary under this section shall be subject to a fine of not more than $1,000 for each day during which the violation continues.]

ORDERS

SEC. 8c. (1) The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in this title as "handlers." Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.

COMMODITIES TO WHICH APPLICABLE

(2) Orders issued pursuant to this section shall be applicable only to the following agricultural commodities and the products thereof (except products of naval stores), or to any regional, or

market classification of any such commodity or product: Milk, fruits (including pecans and walnuts but not including apples and not including fruits, other than olives, for canning), tobacco, vegetables (not including vegetables, other than asparagus, for canning), soybeans and naval stores as included in the Naval Stores Act and standards established thereunder. (including refined or partially refined oleoresin).

NOTICE AND HEARING

(3) Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this title with respect to any commodity or product thereof specified in subsection (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

FINDING AND ISSUANCE OF ORDER

(4) After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this title with respect to such commodity.

TERMS—MILK AND ITS PRODUCTS

(5) In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made, for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers.

(B) Providing:

(i) for the payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered by them: Provided, That, except in the case of orders covering milk products only, such provision is approved or favored by at least three-fourths of the producers who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from

any other approval or disapproval provided for by this section; or

(ii) for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered;

subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered, (c) the locations at which delivery of such milk is made, and (d) a further adjustment, equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their production of milk during a representative period of time.

(C) In order to accomplish the purposes set forth in paragraphs (A) and (B) of this subsection (5), providing a method for making adjustments in payments, as among handlers (including producers who are also handlers), to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at the prices fixed in accordance with paragraph (A) hereof.

(D) Providing that, in the case of all milk purchased by handlers from any producer who did not regularly sell milk during a period of 30 days next preceding the effective date of such order for consumption in the area covered thereby, payments to such producer, for the period beginning with the first regular delivery by such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month, shall be made at the price for the lowest use classification specified in such order, subject to the adjustments specified in paragraph (B) of this subsection (5).

(E) Providing (i) except as to producers for whom such services are being rendered by a cooperative marketing association, qualified as provided in paragraph (F) of this subsection (5), for market information to producers and for the verification of weights, sampling, and testing of milk purchased from producers, and for making appropriate deductions therefor from payments to producers, and (ii) for assurance of, and security for, the payment by handlers for milk purchased.

(F) Nothing contained in this subsection (5) is intended or shall be construed to prevent a cooperative marketing association qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act", engaged in making collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all of its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers: Provided, That it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this subsection (5) for such milk.

(G) No marketing agreement or order applicable to milk and its products in any marketing area shall prohibit or in any manner

limit, in the case of the products of milk, the marketing in that area of any milk or product thereof produced in any production area in the United States.

TERMS—OTHER COMMODITIES

(6) In the case of fruits (including pecans and walnuts but not including apples and not including fruits, other than olives, for canning) and their products, tobacco and its products, vegetables (not including vegetables, other than asparagus, for canning) and their products, soybeans and their products, and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin), orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

(A) Limiting, or providing methods for the limitation of, the total quantity of any such commodity or product, or of any grade, size, or quality thereof, produced during any specified period or periods, which may be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods by all handlers thereof.

(B) Allotting, or providing methods for allotting, the amount of such commodity or product, or any grade, size, or quality thereof, which each handler may purchase from or handle on behalf of any and all producers thereof, during any specified period or periods, under a uniform rule based upon the amounts produced or sold by such producers in such prior period as the Secretary determines to be representative, or upon the current production or sales of such producers, or both, to the end that the total quantity thereof to be purchased or handled during any specified period or periods shall be apportioned equitably among producers.

(C) Allotting, or providing methods for allotting, the amount of any such commodity or product, or any grade, size, or quality thereof, which each handler may market in or transport to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, under a uniform rule based upon the amounts which each such handler has available for current shipment, or upon the amounts shipped by each such handler in such prior period as the Secretary determines to be representative, or both, to the end that the total quantity of such commodity or product, or any grade, size, or quality thereof, to be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods shall be equitably apportioned among all of the handlers thereof.

(D) Determining, or providing methods for determining, the existence and extent of the surplus of any such commodity or product, or of any grade, size, or quality thereof, and providing for the control and disposition of such surplus, and for equalizing the bur-

den of such surplus elimination or control among the producers and handlers thereof.

(E) Establishing, or providing for the establishment of, reserve pools of any such commodity or product, or of any grade, size, or quality thereof, and providing for the equitable distribution of the net return derived from the sale thereof among the persons beneficially interested therein.

TERMS COMMON TO ALL ORDERS

(7) In the case of the agricultural commodities and the products thereof specified in subsection (2) orders shall contain one or more of the following terms and conditions:

(A) Prohibiting unfair methods of competition and unfair trade practices in the handling thereof.

(B) Providing that (except for milk and cream to be sold for consumption in fluid form) such commodity or product thereof, or any grade, size, or quality thereof shall be sold by the handlers thereof only at prices filed by such handlers in the manner provided in such order.

(C) Providing for the selection by the Secretary of Agriculture, or a method for the selection, of an agency or agencies and defining their powers and duties, which shall include only the powers:

(i) To administer such order in accordance with its terms and provisions;

(ii) To make rules and regulations to effectuate the terms and provisions of such order;

(iii) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of such order; and

(iv) To recommend to the Secretary of Agriculture amendments to such order.

No person acting as a member of an agency established pursuant to this paragraph (C) shall be deemed to be acting in an official capacity, within the meaning of section 10 (g) of this title, unless such person receives compensation for his personal services from funds of the United States.

(D) Incidental to, and not inconsistent with, the terms and conditions specified in subsections (5), (6), and (7) and necessary to effectuate the other provisions of such order.

ORDERS WITH MARKETING AGREEMENT

(8) Except as provided in subsection (9) of this section, no order issued pursuant to this section shall become effective until the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of not less than 50 per centum of the volume of the commodity or product thereof covered by such order which is produced or marketed within the production or marketing area defined in such order have signed a marketing agreement, entered into pursuant to section 8b of this title, which regulates the handling of such commodity or product in the same manner as such order, except that as to citrus fruits produced in any area producing what is known as California citrus fruits no order

issued pursuant to this subsection (8) shall become effective until the handlers of not less than 80 per centum of the volume of such commodity or product thereof covered by such order have signed such a marketing agreement: Provided, That no order issued pursuant to this subsection shall be effective unless the Secretary of Agriculture determines that the issuance of such order is approved or favored:

(A) By at least two-thirds of the producers who (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers), during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(B) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

ORDERS WITH OR WITHOUT MARKETING AGREEMENT

(9) Any order issued pursuant to this section shall become effective in the event that, notwithstanding the refusal or failure of handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) covered by such order which is produced or marketed within the production or marketing area defined in such order to sign a marketing agreement relating to such commodity or product thereof, on which a hearing has been held, the Secretary of Agriculture, with the approval of the President, determines:

(A) That the refusal or failure to sign a marketing agreement (upon which a hearing has been held) by the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) specified therein which is produced or marketed within the production or marketing area specified therein tends to prevent the effectuation of the declared policy of this title with respect to such commodity or product, and

(B) That the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy, and is approved or favored:

(i) By at least two-thirds of the producers (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers) who, during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(ii) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

MANNER OF REGULATION AND APPLICABILITY

(10) No order shall be issued under this section unless it regulates the handling of the commodity or product covered thereby in the same manner as, and is made applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held. No order shall be issued under this title prohibiting, regulating, or restricting the advertising of any commodity or product covered thereby, nor shall any marketing agreement contain any provision prohibiting, regulating, or restricting the advertising of any commodity or product covered by such marketing agreement.

REGIONAL APPLICATION

(11) (A) No order shall be issued under this section which is applicable to all production areas or marketing areas, or both, of any commodity or product thereof unless the Secretary finds that the issuance of several orders applicable to the respective regional production areas or regional marketing areas, or both, as the case may be, of the commodity or product would not effectively carry out the declared policy of this title.

(B) Except in the case of milk and its products, orders issued under this section shall be limited in their application to the smallest regional production areas or regional marketing areas, or both, as the case may be, which the Secretary finds practicable, consistently with carrying out such declared policy.

(C) All orders issued under this section which are applicable to the same commodity or product thereof shall, so far as practicable, prescribe such different terms, applicable to different production areas and marketing areas, as the Secretary finds necessary to give due recognition to the differences in production and marketing of such commodity or product in such areas.

COOPERATIVE ASSOCIATION REPRESENTATION

(12) Whenever, pursuant to the provisions of this section, the Secretary is required to determine the approval or disapproval of

producers with respect to the issuance of any order, or any term or condition thereof, or the termination thereof, the Secretary shall consider the approval or disapproval by any cooperative association of producers, bona fide engaged in marketing the commodity or product thereof covered by such order, or in rendering services for or advancing the interests of the producers of such commodity, as the approval or disapproval of the producers who are members of, stockholders in, or under contract with, such cooperative association of producers.

RETAILER AND PRODUCER EXEMPTION

(13) (A) No order issued under subsection (9) of this section shall be applicable to any person who sells agricultural commodities or products thereof at retail in his capacity as such retailer, except to a retailer in his capacity as a retailer of milk and its products.

(B) No order issued under this title shall be applicable to any producer in his capacity as a producer.

VIOLATION OF ORDER

(14) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order (other than a provision calling for payment of a pro rata share of expenses) shall, on conviction, be fined not less than $50 or more than $500 for each such violation, and each day during which such violation continues shall be deemed a separate violation: Provided, That if the court finds that a petition pursuant to subsection (15) of this section was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under this subsection for such violations as occurred between the date upon which the defendant's petition was filed with the Secretary, and the date upon which notice of the Secretary's ruling thereon was given to the defendant in accordance with regulations prescribed pursuant to subsection (15).

PETITION BY HANDLER AND REVIEW

(15) (A) Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(B) The District Courts of the United States (including the Supreme Court of the District of Columbia) in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such

proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 8a (6) of this title. Any proceedings brought pursuant to section 8a (6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15)) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15).

TERMINATION OF ORDERS AND MARKETING AGREEMENTS

(16) (A) The Secretary of Agriculture shall, whenever he finds that any order issued under this section, or any provision thereof, obstructs or does not tend to effectuate the declared policy of this title, terminate or suspend the operation of such order or such provision thereof.

(B) The Secretary shall terminate any marketing agreement entered into under section 8b, or order issued under this section, at the end of the then current marketing period for such commodity, specified in such marketing agreement or order, whenever he finds that such termination is favored by a majority of the producers who, during a representative period determined by the Secretary, have been engaged in the production for market of the commodity specified in such marketing agreement or order, within the production area specified in such marketing agreement or order, or who, during such representative period, have been engaged in the production of such commodity for sale within the marketing area specified in such marketing agreement or order: Provided, That such majority have, during such representative period, produced for market more than 50 per centum of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or have, during such representative period, produced more than 50 per centum of the volume of such commodity sold in the marketing area specified in such marketing agreement or order, but such termination shall be effective only if announced on or before such date (prior to the end of the then current marketing period) as may be specified in such marketing agreement or order.

(C) The termination or suspension of any order or amendment thereto or provision thereof, shall not be considered an order within the meaning of this section.

PROVISIONS APPLICABLE TO AMENDMENTS

(17) The provisions of this section, section 8d, and section 8e applicable to orders shall be applicable to amendments to orders: Provided, That notice of a hearing upon a proposed amendment to

any order issued pursuant to section 8c, given not less than three days prior to the date fixed for such hearing, shall be deemed due notice thereof.

As amended by sec. 5 of Public, No. 320, 74th Congress, approved August 24, 1935.

[(4) To require any licensee under this section to furnish such reports as to quantities of agricultural commodities or products thereof bought and sold and the prices thereof, and as to trade practices and charges, and to keep such systems of accounts, as may be necessary for the purpose of part 2 of this title.]

BOOKS AND RECORDS

Sec. 8d. (1) All parties to any marketing agreement, and all handlers subject to an order, shall severally, from time to time, upon the request of the Secretary, furnish him with such information as he finds to be necessary to enable him to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated the declared policy of this title, and with such information as he finds to be necessary to determine whether or not there has been any abuse of the privilege of exemptions from the antitrust laws. Such information shall be furnished in accordance with forms of reports to be prescribed by the Secretary. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this subsection, or for the purpose of obtaining the information required in any such report, where it has been requested and has not been furnished, the Secretary is hereby authorized to examine such books, papers, records, copies of income-tax reports, accounts, correspondence, contracts, documents, or memoranda, as he deems relevant and which are within the control (1) of any such party to such marketing agreement, or any such handler, from whom such report was requested or (2) of any person having, either directly or indirectly, actual or legal control of or over such party or such handler or (3) of any subsidiary of any such party, handler, or person.

(2) Notwithstanding the provisions of section 7, all information furnished to or acquired by the Secretary of Agriculture pursuant to this section shall be kept confidential by all officers and employees of the Department of Agriculture and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which he or any officer of the United States is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (A) the issuance of general statements based upon the reports of a number of parties to a marketing agreement or of handlers subject to an order, which statements do not identify the information furnished by any person, or (B) the publication by direction of the Secretary, of the name of any person violating any marketing agreement or any order, together with a statement of the particular provisions of the marketing agreement or order violated by such person. Any such

officer or employee violating the provisions of this section shall upon conviction be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office.

DETERMINATION OF BASE PERIOD

Sec. 8e. In connection with the making of any marketing agreement or the issuance of any order, if the Secretary finds and proclaims that, as to any commodity specified in such marketing agreement or order, the purchasing power during the base period specified for such commodity in section 2 of this title cannot be satisfactorily determined from available statistics of the Department of Agriculture, the base period, for the purposes of such marketing agreement or order, shall be the post-war period, August 1919–July 1929, or all that portion thereof for which the Secretary finds and proclaims that the purchasing power of such commodity can be satisfactorily determined from available statistics of the Department of Agriculture.

As amended by sec. 6 of Public, No. 320, 74th Congress, approved August 24, 1935.

[(5)] *Sec. 8f.* No person engaged in the storage in a public warehouse of any basic agricultural commodity in the current of interstate or foreign commerce, shall deliver any such commodity upon which a warehouse receipt has been issued and is outstanding, without prior surrender and cancellation of such warehouse receipt. Any person violating any of the provisions of this subsection shall, upon conviction, be punished by a fine of not more than $5,000, or by imprisonment for not more than two years, or both. [The Secretary of Agriculture may revoke any license issued under subsection (3) of this section, if he finds, after due notice and opportunity for hearing, that the licensee has violated the provisions of this subsection.]

As amended by sec. 7 of Public, No. 320, 74th Congress, approved August 24, 1935.

PROCESSING TAX

SEC. 9. (a) To obtain revenue for extraordinary expenses incurred by reason of the national economic emergency, there shall be levied processing taxes as hereinafter provided. [When the Secretary of Agriculture determines that rental or benefit payments are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation.] *When the Secretary of Agriculture determines that any one or more payments authorized to be made under section 8 are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation;* except that [,] (*1*) in the case of sugar beets and sugarcane, the Secretary of Agriculture shall, on or before the thirtieth day after the adoption of this amendment, proclaim that rental or benefit payments with respect to said commodities are to be made, and the processing tax shall be in effect

on and after the thirtieth day after the date of the adoption of this amendment [.], *and (2) in the case of rice, the Secretary of Agriculture shall, before April 1, 1935, proclaim that rental or benefit payments are to be made with respect thereto, and the processing tax shall be in effect on and after April 1, 1935.* In the case of sugar beets and sugarcane, the calendar year shall be considered to be the marketing year and for the year 1934 the marketing year shall begin January 1, 1934. *In the case of rice, the period from August 1 to July 31, both inclusive, shall be considered to be the marketing year.* The processing tax shall be levied, assessed, and collected upon the first domestic processing of the commodity, whether of domestic production or imported, and shall be paid by the processor. The rate of tax shall conform to the requirements of subsection (b). Such rate shall be determined by the Secretary of Agriculture as of the date the tax first takes effect, and the rate so determined shall, at such intervals as the Secretary finds necessary to effectuate the declared policy, be adjusted by him to conform to such requirements. The processing tax shall terminate at the end of the marketing year current at the time the Secretary proclaims that [rental or benefit payments] *all payments authorized under section 8 which are in effect* are to be discontinued with respect to such commodity. The marketing year for each commodity shall be ascertained and prescribed by regulations of the Secretary of Agriculture: *Provided*, That upon any article upon which a manufacturers' sales tax is levied under the authority of the Revenue Act of 1932 and which manufacturers' sales tax is computed on the basis of weight, such manufacturers' sales tax shall be computed on the basis of the weight of said finished article less the weight of the processed cotton contained therein on which a processing tax has been paid.

As amended by secs. 1 and 2 of Public, No. 20, 74th Congress, approved March 18, 1935, and by sec. 11 of Public, No. 320, 74th Congress, approved August 24, 1935.

[(b) The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity; except that (*1*) if the Secretary has reason to believe that the tax at such rate on the processing of the commodity generally or for any particular use or uses will cause such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depression of the farm price of the commodity, then he shall cause an appropriate investigation to be made and afford due notice and opportunity for hearing to interested parties [. If], *and if* thereupon the Secretary finds that any such result will occur, then the processing tax on the processing of the commodity generally, or for any designated use or uses, or as to any designated product or products thereof for any designated use or uses, shall be at such rate as will prevent such accumulation of surplus stocks and depression of the farm price of the commodity [.], *and (2) for the period from April 1, 1935, to July 31, 1936, both inclusive, the processing tax with respect to rice shall be at the rate of 1 cent per pound or rough rice, subject, however, to any modification of such rate which may be made pursuant to any other provision of this title.* In computing the cur-

rent average farm price in the case of wheat, premiums paid producers for protein content shall not be taken into account. *In the case of rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to a processor, except that where the producer processes his own rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to the place of processing.* In the case of sugar beets or sugarcane the rate of tax shall be applied to the direct-consumption sugar, resulting from the first domestic processing, translated into terms of pounds of raw value according to regulations to be issued by the Secretary of Agriculture, and the rate of tax to be so applied shall be the higher of the two following quotients: The difference between the current average farm price and the fair exchange value (1) of a ton of sugar beets and (2) of a ton of sugarcane, divided in the case of each commodity by the average extraction therefrom of sugar in terms of pounds of raw value (which average extraction shall be determined from available statistics of the Department of Agriculture); except that such rate shall not exceed the amount of the reduction by the President on a pound of sugar raw value of the rate of duty in effect on January 1, 1934, under paragraph 501 of the Tariff Act of 1930, as adjusted to the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on December 11, 1902, and/or the provisions of the Act of December 17, 1903, chapter 1.]

As amended by secs. 3 and 4 of Public, No. 20, 74th Congress, approved March 18, 1935.

TAX RATE GENERALLY

(b) (1) The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, plus such percentage of such difference, not to exceed 20 per centum, as the Secretary of Agriculture may determine will result in the collection, in any marketing year with respect to which such rate of tax may be in effect pursuant to the provisions of this title, of an amount of tax equal to (A) the amount of credits or refunds which he estimates will be allowed or made during such period pursuant to section 15 (c) with respect to the commodity and (B) the amount of tax which he estimates would have been collected during such period upon all processings of such commodity which are exempt from tax by reason of the fact that such processings are done by or for a State, or a political subdivision or an institution thereof, had such processings been subject to tax. If, prior to the time the tax takes effect, or at any time thereafter, the Secretary has reason to believe that the tax at such rate, or at the then existing rate, on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, will cause or is causing such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depression of the farm price of the commodity, then the Secretary shall cause an appropriate investigation to be made, and afford due

notice and opportunity for hearing to interested parties. If thereupon the Secretary determines and proclaims that any such result will occur or is occurring, then the processing tax on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be at such lower rate or rates as he determines and proclaims will prevent such accumulation of surplus stocks and depression of the farm price of the commodity, and the tax shall remain during its effective period at such lower rate until the Secretary, after due notice and opportunity for hearing to interested parties, determines and proclaims that an increase in the rate of such tax will not cause such accumulation of surplus stocks or depression of the farm price of the commodity. Thereafter the processing tax shall be at the highest rate which the Secretary determines will not cause such accumulation of surplus stocks or depression of the farm price of the commodity, but it shall not be higher than the rate provided in the first sentence of this paragraph.

SPECIFIC TAX RATES

(2) In the case of wheat, cotton, field corn, hogs, peanuts, tobacco, paper, and jute, and (except as provided in paragraph (8) of this subsection) in the case of sugarcane and sugar beets, the tax on the first domestic processing of the commodity generally or for any particular use, or in the production of any designated product for any designated use, shall be levied, assessed, collected, and paid at the rate prescribed by the regulations of the Secretary of Agriculture in effect on the date of the adoption of this amendment, during the period from such date to December 31, 1937, both dates inclusive.

SPECIFIC TAX RATE—RICE

(3) For the period from April 1, 1935, to July 31, 1936, both inclusive, the processing tax with respect to rice shall be levied, assessed, collected, and paid at the rate of 1 cent per pound of rough rice.

SPECIFIC TAX RATE—MARKETING YEAR—FLOOR STOCKS—RYE

(4) For the period from September 1, 1935, to December 31, 1937, both inclusive, the processing tax with respect to rye shall be levied, assessed, collected, and paid at the rate of 30 cents per bushel of fifty-six pounds. In the case of rye, the first marketing year shall be considered to be the period commencing September 1, 1935, and ending June 30, 1936. Subsequent marketing years shall commence on July 1 and end on June 30 of the succeeding year. The provisions of section 16 of this title shall not apply in the case of rye.

SPECIFIC TAX RATE—FLOOR STOCKS—BARLEY

(5) If at any time prior to December 31, 1937, a tax with respect to barley becomes effective pursuant to proclamation as provided in subsection (a) of this section, such tax shall be levied, assessed, collected, and paid during the period from the date upon which such tax becomes effective to December 31, 1937, both inclusive, at

the rate of 25 cents per bushel of forty-eight pounds. The provisions of section 16 of this title shall not apply in the case of barley.

ADJUSTMENT OF RATE

(6) (A) Any rate of tax which is prescribed in paragraph (2), (3), (4), or (5) of this subsection or which is established pursuant to this paragraph (6) on the processing of any commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be decreased (including a decrease to zero) in accordance with the formulae, standards, and requirements of paragraph (1) of this subsection, in order to prevent such reduction in the quantity of such commodity or the products thereof domestically consumed as will result in the accumulation of surplus stocks of such commodity or the products thereof or in the depression of the farm price of the commodity, and shall thereafter be increased in accordance with the provisions of paragraph (1) of this subsection but subject to the provisions of subdivision (B) of this paragraph (6).

(B) If the average farm price of any commodity, the rate of tax on the processing of which is prescribed in paragraph (2), (3), (4), or (5) of this subsection or is established pursuant to this paragraph (6), during any period of twelve successive months ending after July 1, 1935, consisting of the first ten months of any marketing year and the last two months of the preceding marketing year—

(i) is equal to, or exceeds by 10 per centum or less, the fair exchange value thereof, or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6)) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 20 per centum of the fair exchange value thereof.

(ii) exceeds by more than 10 per centum, but not more than 20 per centum, the fair exchange value thereof, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6)) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 15 per centum of the fair exchange value thereof.

(iii) exceeds by more than 20 per centum the fair exchange value thereof, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6)) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 10 per centum of the fair exchange value thereof.

(C) Any rate of tax which has been adjusted pursuant to this paragraph (6) shall remain at such adjusted rate unless further adjusted or terminated pursuant to this paragraph (6), until December 31, 1937, or until July 31, 1936, in the case of rice.

(D) In accordance with the formulae, standards, and requirements prescribed in this title, any rate of tax prescribed in paragraph (2), (3), (4), or (5) of this subsection or which is established pursuant to this paragraph (6) shall be increased.

(E) Any tax the rate of which is prescribed in paragraph (2), (3), (4), or (5) of this subsection or which is established pursuant to this paragraph (6), shall terminate pursuant to proclamation as

provided in section 9 (a) of this title or pursuant to section 13 of this title. Any such tax with respect to any basic commodity which terminates pursuant to proclamation as provided in section 9 (a) of this title shall again become effective at the rate prescribed in paragraph (2), (3), (4), or (5) of this subsection, subject however, to the provisions of subdivisions (A) and (B) of this paragraph (6), from the beginning of the marketing year for such commodity next following the date of a new proclamation by the Secretary as provided in section 9 (a) of this title, if such marketing year begins prior to December 31, 1937, or prior to July 31, 1936, in the case of rice, and shall remain at such rate until altered or terminated pursuant to the provisions of section 9 or terminated pursuant to section 13 of this title.

(F) After December 31, 1937 (in the case of the commodities specified in paragraphs (2), (4), and (5) of this subsection), and after July 31, 1936 (in the case of rice), rates of tax shall be determined by the Secretary of Agriculture in accordance with the formulae, standards, and requirements prescribed in this title but not in this paragraph (6), and shall, subject to such formulae, standards, and requirements, thereafter be effective.

(G) If the applicability to any person or circumstances of any tax, the rate of which is fixed in pursuance of this paragraph (6), is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be levied, assessed, collected, and paid (in lieu of all rates of tax fixed in pursuance of this paragraph (6) with respect to all tax liabilities incurred under this title on or after the effective date of each of the rates of tax fixed in pursuance of this paragraph (6)), rates of tax fixed under paragraph (2), (3), (4), or (5), and such rates shall be in effect (unless the particular tax is terminated pursuant to proclamation, as provided in section 9 (a) or pursuant to section 13) until altered by Act of Congress; except that, for any period prior to the effective date of such holding of invalidity, the amount of tax which represents the difference between the tax at the rate fixed in pursuance of this paragraph (6) and the tax at the rate fixed under paragraphs (2), (3), (4), and (5) shall not be levied, assessed, collected, or paid.

RICE—SPECIAL RULE

(7) In the case of rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to a processor, except that, where the producer processes his own rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to the place of processing.

SUGAR—SPECIAL RULE

(8) In the case of sugar beets or sugarcane the rate of tax shall be applied to the direct-consumption sugar, resulting from the first domestic processing, translated into terms of pounds of raw value according to regulations to be issued by the Secretary of Agriculture, and in the event that the Secretary increases or decreases the rate

of tax fixed by paragraph (2) of this subsection, pursuant to the provisions of paragraph (6) of this subsection, then the rate of tax to be so applied shall be the higher of the two following quotients: The difference between the current average farm price and the fair exchange value (A) of a ton of sugar beets and (B) of a ton of sugarcane, divided in the case of each commodity by the average extraction therefrom of sugar in terms of pounds of raw value (which average extraction shall be determined from available statistics of the Department of Agriculture); the rate of tax fixed by paragraph (2) of this subsection or adjusted pursuant to the provisions of paragraph (6) of this subsection shall in no event exceed the amount of the reduction by the President on a pound of sugar raw value of the rate of duty in effect on January 1, 1934, under paragraph 501 of the Tariff Act of 1930, as adjusted to the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on December 11, 1902, and/or the provisions of the Act of December 17, 1903, chapter 1.

WHEAT PREMIUMS

(9) In computing the current average farm price in the case of wheat, premiums paid producers for protein content shall not be taken into account.

As amended by sec. 12 of Public, No. 320, 74th Congress, approved August 24, 1935.

[(c) For the purposes of part 2 of this title, the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period specified in section 2; and the current average farm price and the fair exchange value shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture.]

(c) For the purposes of part 2 of this title, the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period specified in section 2; and, in the case of all commodities where the base period is the pre-war period, August 1909 to July 1914, will also reflect interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during said base period; and the current average farm price and the fair exchange value shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture. The rate of tax upon the processing of any commodity, in effect on the date on which this amendment is adopted, shall not be affected by the adoption of this amendment and shall not be required to be adjusted or altered, unless the Secretary of Agriculture finds that it is necessary to adjust or alter any such rate pursuant to section 9 (a) of this title.

As amended by sec. 13 of Public, No. 320, 74th Congress, approved August 24, 1935.

(d) As used in part 2 of this title—

(1) In case of wheat [, rice,], *rye, barley,* and corn, the term "processing" means the milling or other processing (except clean-

ing and drying) of wheat [, rice,], *rye*, *barley*, or corn for market, including custom milling for toll as well as commercial milling, but shall not include the grinding or cracking thereof not in the form of flour for feed purposes only.

Sec. 5 of Public, No. 20, 74th Congress, approved March 18, 1935, strikes out the word "rice"; sec. 14 (a) of Public, No. 320, 74th Congress, approved August 24, 1935, inserts the words "rye, barley".

(2) In case of cotton, the term "processing" means the spinning, manufacturing, or other processing (except ginning) of cotton; and the term "cotton" shall not include cotton linters.

(3) In case of tobacco, the term "processing" means the manufacturing or other processing (except drying or converting into insecticides and fertilizers) of tobacco.

[(5) In case of peanuts, the term "processing" means the cleaning, polishing, grading, shelling, crushing, or other processing thereof.]

Repealed by sec. 14 (b) of Public, No. 320, 74th Congress, approved August 24, 1935.

(6) In the case of sugar beets and sugarcane—

(A) The term "first domestic processing" means each domestic processing, including each processing of successive domestic processings, of sugar beets, sugarcane, or raw sugar, which directly results in direct-consumption sugar.

(B) The term "sugar" means sugar in any form whatsoever, derived from sugar beets or sugarcane, whether raw sugar or direct-consumption sugar, including also edible molasses, sirups and any mixture containing sugar (except blackstrap molasses and beet molasses).

(C) The term "blackstrap molasses" means the commercially so-designated "byproduct" of the cane-sugar industry, not used for human consumption or for the extraction of sugar.

(D) The term "beet molasses" means the commercially so-designated "byproduct" of the beet-sugar industry, not used for human consumption or for the extraction of sugar.

(E) The term "raw sugar" means any sugar, as defined above, manufactured or marketed in, or brought into, the United States, in any form whatsoever, for the purpose of being, or which shall be, further refined (or improved in quality, or further prepared for distribution or use).

(F) The term "direct-consumption sugar" means any sugar, as defined above, manufactured or marketed in, or brought into, the United States in any form whatsoever, for any purpose other than to be further refined (or improved in quality, or further prepared for distribution or use).

(G) The term "raw value" means a standard unit of sugar testing ninety-six sugar degrees by the polariscope. All taxes shall be imposed and all quotas shall be established in terms of "raw value" and for purposes of quota and tax measurements all sugar shall be translated into terms of "raw value" according to regulations to be issued by the Secretary, except that in the case of direct-consumption sugar produced in continental United States from sugar beets the

raw value of such sugar shall be one and seven one-hundredths times the weight thereof.

(7) In the case of rice—

(A) The term "rough rice" means rice in that condition which is usual and customary when delivered by the producer to a processor.

(B) The term "processing" means the cleaning, shelling, milling, (including custom milling for toll as well as commercial milling), grinding, rolling, or other processing (except grinding or cracking by or for the producer thereof for feed for his own livestock, cleaning by or directly for a producer for seed purposes, and drying) of rough rice; and in the case of rough rice with respect to which a tax-payment warrant has been previously issued or applied for by application then pending, the term "processing" means any one of the above mentioned processings or any preparation or handling in connection with the sale or other disposition thereof.

(C) The term "cooperating producer" means any person (including any share-tenant or share-cropper) whom the Secretary of Agriculture finds to be willing to participate in the 1935 production-adjustment program for rice.

(D) The term "processor", as used in subsection (b–1) of section 15 of this title, means any person (including a cooperative association of producers) engaged in the processing of rice on a commercial basis (including custom milling for toll as well as commercial milling).

Sec. 6 of Public, No. 20, 74th Congress, approved March 18, 1935, adds section 7.

[(7)] *(8)* In the case of any other commodity, the term "processing" means any manufacturing or other processing involving a change in the form of the commodity or its preparation for distribution or use, as defined by regulations of the Secretary of Agriculture; and in prescribing such regulations the Secretary shall give due weight to the customs of the industry.

Sec. 6 of Public, No. 20, 74th Congress, approved March 18, 1935, renumbers paragraph "(7)" to "(8)".

(e) When any processing tax, or increase or decrease therein, takes effect in respect of a commodity the Secretary of Agriculture, in order to prevent pyramiding of the processing tax and profiteering in the sale of the products derived from the commodity, shall make public such information as he deems necessary regarding (1) the relationship between the processing tax and the price paid to producers of the commodity, (2) the effect of the processing tax upon prices to consumers of products of the commodity, (3) the relationship, in previous periods, between prices paid to the producers of the commodity and prices to consumers of the products thereof, and (4) the situation in foreign countries relating to prices paid to producers of the commodity and prices to consumers of the products thereof.

(f) For the purposes of part 2 of this title, processing shall be held to include manufacturing.

(g) Nothing contained in this title shall be construed to authorize any tax upon the processing of any commodity which processing results in the production of newsprint.

Added by sec. 15 of Public, No. 320, 74th Congress, approved August 24, 1935.

MISCELLANEOUS

SEC. 10. (a) The Secretary of Agriculture may appoint such officers and employees, subject to the provisions of the Classification Act of 1923 and Acts amendatory thereof, and such experts as are necessary to execute the functions vested in him by this title; and the Secretary may make such appointments without regard to the civil service laws or regulations: *Provided*, That no salary in excess of $10,000 per annum shall be paid to any officer, employee, or expert of the Agricultural Adjustment Administration, which the Secretary shall establish in the Department of Agriculture for the administration of the functions vested in him by this title: *And provided further*, That the State Administrator appointed to administer this Act in each State shall be appointed by the President, by and with the advice and consent of the Senate. Title II of the Act entitled "An Act to maintain the credit of the United States Government", approved March 20, 1933, to the extent that it provides for the impoundment of appropriations on account of reductions in compensation, shall not operate to require such impoundment under appropriations contained in this Act.

[(b) The Secretary of Agriculture is authorized to establish, for the more effective administration of the functions vested in him by this title, State and local committees, or associations of producers, and to permit cooperative associations of producers, when in his judgment they are qualified to do so, to act as agents of their members and patrons in connection with the distribution of rental or benefit payments.]

(b) The Secretary of Agriculture is authorized to establish, for the more effective administration of the functions vested in him by this title, State and local committees, or associations of producers, and to permit cooperative associations of producers, when in his judgment they are qualified to do so, to act as agents of their members and patrons in connection with the distribution of payments authorized to be made under section 8. The Secretary, in the administration of this title, shall accord such recognition and encouragement to producer-owned and producer-controlled cooperative associations as will be in harmony with the policy toward cooperative associations set forth in existing Acts of Congress, and as will tend to promote efficient methods of marketing and distribution.

(2) Each order issued by the Secretary under this title shall provide that each handler subject thereto shall pay to any authority or agency established under such order such handler's pro rata share (as approved by the Secretary) of such expenses as the Secretary may find will necessarily be incurred by such authority or agency, during any period specified by him, for the maintenance and functioning of such authority or agency, other than expenses incurred in receiving, handling, holding, or disposing of any quantity of a commodity received, handled, held, or disposed of by such authority or agency for the benefit or account of persons other than handlers subject to such order. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the agricultural commodity or product thereof covered by such order which is distributed, processed, or shipped by

such cooperative association of producers. Any such authority or agency may maintain in its own name, or in the names of its members, a suit against any handler subject to an order for the collection of such handler's pro rata share of expenses. The several District Courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy.

As amended by sec. 16 of Public, No. 320, 74th Congress, approved August 24, 1935.

(c) The Secretary of Agriculture is authorized, with the approval of the President, to make such regulations with the force and effect of law as may be necessary to carry out the powers vested in him by this title, including regulations establishing conversion factors for any commodity and articles processed therefrom to determine the amount of tax imposed or refunds to be made with respect thereto. Any violation of any regulation shall be subject to such penalty, not in excess of $100, as may be provided therein.

(d) The Secretary of the Treasury is authorized to make such regulations as may be necessary to carry out the powers vested in him by this title.

(e) The action of any officer, employee, or agent in determining the amount of and in making any [rental or benefit payment] *payment authorized to be made under section 8* shall not be subject to review by any officer of the Government other than the Secretary of Agriculture or Secretary of the Treasury.

As amended by sec. 17 of Public, No. 320, 74th Congress, approved August 24, 1935.

(f) The provisions of this title shall be applicable to the United States and its possessions, except the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam; except that, in the case of sugar beets and sugarcane, the President, if he finds it necessary in order to effectuate the declared policy of this Act, is authorized by proclamation to make the provisions of this title applicable to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam. *The President is authorized to attach by Executive order any or all of such possessions to any internal revenue collection district for the purpose of carrying out the provisions of this title.*

As amended by Public, No. 331, 74th Congress, approved August 26, 1935.

(g) No person shall, while acting in any official capacity in the administration of this title, speculate, directly or indirectly, in any agricultural commodity or product thereof, to which this title applies, or in contracts relating thereto, or in the stock or membership interests of any association or corporation engaged in handling, processing, or disposing of any such commodity or product. Any person violating this subsection shall upon conviction thereof be fined not more than $10,000 or imprisoned not more than two years, or both.

(h) For the efficient administration of the provisions of part 2 of this title, the provisions, including penalties, of sections 8, 9, and 10 of the Federal Trade Commission Act, approved September 26, 1914, are made applicable to the jurisdiction, powers, and duties of the Secretary in administering the provisions of this title and to

any person subject to the provisions of this title, whether or not a corporation. Hearings authorized or required under this title shall be conducted by the Secretary of Agriculture or such officer or employee of the Department as he may designate for the purpose. The Secretary may report any violation of any agreement entered into under part 2 of this title to the Attorney General of the United States, who shall cause appropriate proceedings to enforce such agreements to be commenced and prosecuted in the proper courts of the United States without delay.

(*i*) *The Secretary of Agriculture upon the request of the duly constituted authorities of any State is directed, in order to effectuate the declared policy of this title and in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof, to confer with and hold joint hearings with the duly constituted authorities of any State, and is authorized to cooperate with such authorities; to accept and utilize, with the consent of the State, such State and local officers and employees as may be necessary; to avail himself of the records and facilities of such authorities; to issue orders (subject to the provisions of section 8c) complementary to orders or other regulations issued by such authorities; and to make available to such State authorities the records and facilities of the Department of Agriculture: Provided, That information furnished to the Secretary of Agriculture pursuant to section 8d (1) hereof shall be made available only to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities, and then only upon a written agreement by such authorities that the information so furnished shall be kept confidential by them in a manner similar to that required of Federal officers and employees under the provisions of section 8d (2) hereof.*

Added by sec. 18 of Public, No. 320, 74th Congress, approved August 24, 1935.

COMMODITIES

SEC. 11. As used in this title, the term "basic agricultural commodity" means wheat, rye, flax, barley, cotton, field corn, grain sorghums, hogs, cattle, rice, *potatoes*, tobacco, sugar beets and sugarcane, peanuts, and milk and its products, and any regional or market classification, type, or grade thereof; but the Secretary of Agriculture shall exclude from the operation of the provisions of this title, during any period, any such commodity or classification, type, or grade thereof if he finds, upon investigation at any time and after due notice and opportunity for hearing to interested parties, that the conditions of production, marketing, and consumption are such that during such period this title cannot be effectively administered to the end of effectuating the declared policy with respect to such commodity or classification, type, or grade thereof. *As used in this title, the term "potatoes" means all varieties of potatoes included in the species Solanum tuberosum.*

As amended by sec. 61 of Public, No. 320, 74th Congress, approved August 24, 1935.

APPROPRIATION

SEC. 12. (a) There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $100,000,000 to be available to the Secretary of Agriculture for administrative expenses under this title and for [rental and benefit payments made with respect to reduction in acreage or reduction in production for market under part 2 of this title] *payments authorized to be made under section 8*. Such sum shall remain available until expended.

As amended by sec. 19 of Public, No. 320, 74th Congress, approved August 24, 1935.

To enable the Secretary of Agriculture to finance, under such terms and conditions as he may prescribe, surplus reductions and production adjustments with respect to the dairy- and beef-cattle industries, and to carry out any of the purposes described in subsections (a) and (b) of this section (12) and to support and balance the markets for the dairy and beef cattle industries, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $200,000,000: *Provided*, That not more than 60 per centum of such amount shall be used for either of such industries.

(b) [In addition to the foregoing, the proceeds derived from all taxes imposed under this title are hereby appropriated to be available to the Secretary of Agriculture for expansion of markets and removal of surplus agricultural products and the following purposes under part 2 of this title: Administrative expenses, rental and benefit payments, and refunds on taxes.] *In addition to the foregoing, for the purpose of effectuating the declared policy of this title, a sum equal to the proceeds derived from all taxes imposed under this title is hereby appropriated to be available to the Secretary of Agriculture for (1) the acquisition of any agricultural commodity pledged as security for any loan made by any Federal agency, which loan was conditioned upon the borrower agreeing or having agreed to cooperate with a program of production adjustment or marketing adjustment adopted under the authority of this title, and (2) the following purposes under part 2 of this title: Administrative expenses, payments authorized to be made under section 8, and refunds on taxes.* The Secretary of Agriculture and the Secretary of the Treasury shall jointly estimate from time to time the amounts, in addition to any money available under subsection (a), currently required for such purposes; and the Secretary of the Treasury shall, out of any money in the Treasury not otherwise appropriated, advance to the Secretary of Agriculture the amounts so estimated. The amount of any such advance shall be deducted from such tax proceeds as shall subsequently become available under this subsection.

As amended by sec. 3 of Public, No. 320, 74th Congress, approved August 24, 1935.

(c) The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books and books of reference, for contract stenographic reporting services, and for printing and paper in addition to allotments under the existing law. The Secretary of Agriculture shall transfer to the Treasury Department, and is authorized to transfer to other agencies, out of

funds available for administrative expenses under this title, such sums as are required to pay administrative expenses incurred and refunds made by such department or agencies in the administration of this title.

TERMINATION OF ACT

SEC. 13. This title shall cease to be in effect whenever the President finds and proclaims that the national economic emergency in relation to agriculture has been ended; and pending such time the President shall by proclamation terminate with respect to any basic agricultural commodity such provisions of this title as he finds are not requisite to carrying out the declared policy with respect to such commodity. In the case of sugar beets and sugarcane, the taxes provided by this title shall cease to be in effect, and the powers vested in the President or in the Secretary of Agriculture shall terminate [at the end of three years after the adoption of this amendment] *on December 31, 1937*, unless this title ceases to be in effect at an earlier date, as hereinabove provided. The Secretary of Agriculture shall make such investigations and reports thereon to the President as may be necessary to aid him in executing this section.

As amended by sec. 20 (a) of Public, No. 320, 74th Congress, approved August 24, 1935.

SEPARABILITY OF PROVISIONS

SEC. 14. If any provision of this title is declared unconstitutional, or the applicability thereof to any person, circumstance, or commodity is held invalid the validity of the remainder of this title and the applicability thereof to other persons, circumstances, or commodities shall not be affected thereby.

SUPPLEMENTARY REVENUE PROVISIONS

EXEMPTIONS AND COMPENSATING TAXES

SEC. 15. (a) If at any time the Secretary of Agriculture finds, upon investigation and after due notice and opportunity for hearing to interested parties, that any class of products of any commodity is of such low value, considering the quantity of the commodity used for their manufacture, that the imposition of the processing tax would prevent in whole or in large part the use of the commodity in the manufacture of such products and thereby substantially reduce consumption and increase the surplus of the commodity, then the Secretary of Agriculture shall so certify to the Secretary of the Treasury, specifying whether such result will in his judgment most effectively be prevented by a suspension of the imposition of the processing tax or a refund of the tax paid, with respect to such amount of the commodity or any product thereof as is used in the manufacture of such products, and thereafter, as shall be specified in such certification, (1) the imposition of the processing tax shall be suspended with respect to such amount of the commodity as is used in the manufacture of such products, ‖ and thereafter, as shall be specified in such certification, (2) the imposition of the processing tax shall be suspended with respect to such amount of the commodity

as is used in the manufacture of such products [1] until such time as the Secretary of Agriculture, after further investigation and due notice and opportunity for hearing to interested parties, revokes his certification to the Secretary of the Treasury, or (3) the Secretary of the Treasury shall refund (in accordance with the provisions of, to such persons and in such manner as shall be specified in, such certification) the amount of any tax paid (prior to the date of any revocation by the Secretary of Agriculture of his certification to the Secretary of the Treasury, upon further investigation and after due notice and opportunity for hearing to interested parties) under this title with respect to such amount of the commodity or any product thereof as is used after the date of such certification in the manufacture of such products[.], *or shall credit against any tax due and payable under this title the amount of tax which would be refundable. During the period in which any certificate under this section is effective, the provisions of subsection (e) of this section shall be suspended with respect to all imported articles of the kind described in such certificate; and notwithstanding the provisions of section 21, any compensating taxes, which have heretofore, during the period in which any certificate under this section has been effective, become due and payable upon imported articles of the kind described in such certificate, shall be refunded by the Secretary of the Treasury if the same have been paid, or, if the same have not been paid the amount thereof shall be abated. Notwithstanding the provisions of section 21, the Secretary of the Treasury shall refund or credit any processing tax paid on or before June 12, 1934, with respect to such amount of cotton as was used in the manufacture of large cotton bags (as defined in the Certificate of the Secretary of Agriculture, dated June 12, 1934) between June 13 and July 7, 1934, both inclusive.*

As amended by sec. 21 of Public, No. 320, 74th Congress, approved August 24, 1935.

(b) No tax shall be required to be paid on the processing of any commodity by or for the producer thereof for consumption by his own family, employees, or household; and the Secretary of Agriculture is authorized, by regulations, to exempt from the payment of the processing tax the processing of commodities by or for the producer thereof for sale by him where, in the judgment of the Secretary, the imposition of a processing tax with respect thereto is unnecessary to effectuate the declared policy.

(*b–1*) *The Secretary of Agriculture is authorized and directed to issue tax-payment warrants, with respect to rough rice produced in 1933 and 1934 (provided the processing of such rice is not exempt from the tax, and provided no tax-payment warrant has been previously issued with respect thereto or previously applied for by application then pending, sufficient to cover the tax with respect to the processing thereof at the rate in effect at the time of such issuance, to any processor with respect to any such rice which he has in his possession on March 31, 1935, and to, or at the direction of any other person with respect to any such rice which, on or after April 1, 1935, he delivers for processing or sells to a processor: Provided, That in case any such processor or other person is the producer of such rice (or has received such rice by gift, bequest, or descent from the*

[1] So in original.

producer thereof) that such processor or other person is, if eligible, a cooperating producer: And provided further, That in case such processor or other person is not the producer thereof (nor a person who has received such rice by gift, bequest, or descent from the producer thereof), (a) that, if the title to such rice was transferred from the producer thereof, whether by operation of law or otherwise, prior to April 1, 1935, such producer received the price prescribed in any marketing agreement, license, regulation, or administrative ruling, pursuant to this title, applicable to the sale of such rice by the producer, and (b) that, if the title to such rice was transferred from the producer thereof, whether by operation of law or otherwise, on or after April 1, 1935, such producer received at least the full market price therefor plus an amount equal to 99 per centum of the face value of tax-payment warrants sufficient to cover the tax on the processing of such rice at rate in effect at the time title was so transferred, and was, if eligible, a cooperating producer.

(b–2) The warrants authorized and directed to be issued by subsection (b–1) of this section—

(1) shall be issued by the Secretary of Agriculture or his duly authorized agent in such manner, at such time or times, at such place or places, in such form, and subject to such terms and conditions with reference to the transfer thereof or the voiding of warrants fraudulently obtained and/or erroneously issued, as the Secretary of Agriculture may prescribe, and the Secretary of Agriculture is authorized to discontinue the further issuance of tax-payment warrants at any time or times and in any region or regions when he shall determine that the rice in any such region or regions can no longer be identified adequately as rice grown in 1933 or 1934; and

(2) shall be accepted by the Collector of Internal Revenue and the Secretary of the Treasury at the face value thereof in payment of any processing tax on rice.

(b–3) (1) Any person who deals or traffics in, or purchases any such tax-payment warrant or the right of any person thereto at less than 99 per centum of its face value shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year or both.

(2) Any person who, with intent to defraud, secures or attempts to secure, or aids or assists in or procures, counsels, or advises, the securing or attempting to secure any tax-payment warrant with respect to rice as to which any tax-payment warrant has been theretofore issued shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(3) Any person who with intent to defraud forges, makes, alters, or counterfeits any tax-payment warrant or any stamp, tag, or other means of identification provided for by this title or any regulation issued pursuant thereto, or makes any false entry upon such warrant or any false statement in any application for the issuance of such warrant, or who uses, sells, lends, or has in his possession any such altered, forged, or counterfeited warrant or stamp, tag, or other means of identification, or who makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such warrants or stamps, tags, or other means of identification,

shall, upon conviction thereof, be punished by a fine not exceeding $5,000 or by imprisonment not exceeding five years, or both.

(4) All producers, warehousemen, processors, and common carriers, having information with respect to rice produced in the years 1933 or 1934, may be required to furnish to the Secretary of Agriculture such information as he shall, by order, prescribe as necessary to safeguard the issuance, transfer, and/or use of tax-payment warrants.

(5) The Secretary of Agriculture may make regulations protecting the interests of producers (including share-tenants and sharecroppers) and others, in the issuance, holding, use, and/or transfer of such tax-payment warrants.

Added by sec. 8 of Public, No. 20, 74th Congress, approved March 18, 1935.

(c) Any person, including any State or Federal organization or institution, delivering any product to any organization for charitable distribution, or use, including any State or Federal welfare organization, for its own use, whether the product is delivered as merchandise, or as a container for merchandise, or otherwise, shall, if such product or the commodity from which processed is under this title subject to tax, be entitled to a refund of the amount of any tax due and paid under this title with respect to such product so delivered, or to a credit against any tax due and payable under this title of the amount of tax which would be refundable under this section with respect to such product so delivered: *Provided, however*, That no tax shall be refunded or credited under this section, unless the person claiming the refund or credit establishes, in accordance with regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury (1) that he has not included the tax in the price of the product so delivered or collected the amount of the tax from the said organization, or (2) that he has repaid, or has agreed in writing to repay, the amount of the tax to the said organization. [No refund shall be allowed under this section unless claim therefor is filed within six months after delivery of the products to the organization for charitable distribution, or use.] The word "State" as used in this section shall include a State and any political subdivision thereof.

As amended by sec. 22 of Public, No. 320, 74th Congress, approved August 24, 1935.

(d) The Secretary of Agriculture shall ascertain from time to time whether the payment of the processing tax upon any basic agricultural commodity is causing or will cause to the processors *or producers* thereof disadvantages in competition from competing commodities by reason of excessive shifts in consumption between such commodities or products thereof. If the Secretary of Agriculture finds, after investigation and due notice and opportunity for hearing to interested parties, that such disadvantages in competition exist, or will exist, he shall proclaim such finding. The Secretary shall specify in this proclamation the competing commodity and the compensating rate of tax on the processing thereof necessary to prevent such disadvantages in competition. Thereafter there shall be levied, assessed, and collected upon the first domestic processing of such competing commodity a tax, to be paid by the processor, at the rate

specified, until such rate is altered pursuant to a further finding under this section, or the tax or rate thereof on the basic agricultural commodity is altered or terminated. In no case shall the tax imposed upon such competing commodity exceed that imposed per equivalent unit, as determined by the Secretary, upon the basic agricultural commodity.

As amended by sec. 23 of Public, No. 320, 74th Congress, approved August 24, 1935.

(e) During any period for which a processing tax is in effect with respect to any commodity there shall be levied, assessed, collected, and paid upon any article processed or manufactured wholly or partly from such commodity and imported into the United States or any possession thereof to which this title applies, from any foreign country or from any possession of the United States to which this title does not apply, whether imported as merchandise, or as a container of merchandise, or otherwise, a compensating tax equal to the amount of the processing tax in effect with respect to domestic processing of such commodity *into such an article* at the time of importation: *Provided, (1) That in the event any of the provisions of this title have been or are hereafter made applicable to any possession of the United States in the case of any particular commodity or commodities, but not generally, this title, for the purposes of this subsection, shall be deemed applicable to such possession with respect to such commodity or commodities but shall not be deemed applicable to such possession with respect to other commodities; and* (2) That all taxes collected under this subsection upon articles coming from the possessions of the United States to which this title does not apply shall not be covered into the general fund of the Treasury of the United States but shall be held as a separate fund and paid into the Treasury of the said possessions, respectively, to be used and expended by the governments thereof for the benefit of agriculture. Such tax shall be paid prior to the release of the article from customs custody or control.

As amended by sec. 9 of Public, No. 20, 74th Congress, approved March 18, 1935; and by sec. 24 of Public, No. 320, 74th Congress, approved August 24, 1935.

(f) The President, in his discretion, is authorized by proclamation to decree that all or part of the taxes collected from the processing of sugar beets or sugarcane in Puerto Rico, the Territory of Hawaii, the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam (if the provisions of this title are made applicable thereto), and/or upon the processing in continental United States of sugar produced in, or coming from, said areas, shall not be covered into the general fund of the Treasury of the United States but shall be held as a separate fund, in the name of the respective area to which related, to be used and expended for the benefit of agriculture and/or paid as rental or benefit payments in connection with the reduction in the acreage, or reduction in the production for market, or both, of sugar beets and/or sugarcane, and/or used and expended for expansion of markets and for removal of surplus agricultural products in such areas, respectively, as the Secretary of Agriculture, with the approval of the President, shall direct.

FLOOR STOCKS

SEC. 16. (a) Upon the sale or other disposition of any article processed wholly or in chief value from any commodity with respect to which a processing tax is to be levied, that on the date the tax first takes effect or wholly terminates with respect to the commodity, is held for sale or other disposition (including articles in transit) by any person, there shall be made a tax adjustment as follows:

(1) Whenever the processing tax first takes effect, there shall be levied, assessed, and collected a tax to be paid by such person equivalent to the amount of the processing tax which would be payable with respect to the commodity from which processed if the processing had occurred on such date. Such tax upon articles imported prior to, but in customs custody or control on, the effective date, shall be paid prior to release therefrom. In the case of sugar, the tax on floor stocks, except the retail stocks of persons engaged in retail trade, shall be paid for the month in which the stocks are sold, or used in the manufacture of other articles, under rules and regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury.

[(2) Whenever the processing tax is wholly terminated, there shall be refunded to such person a sum (or if it has not been paid, the tax shall be abated) in an amount equivalent to the processing tax with respect to the commodity from which processed.]

(2) Whenever the processing tax is wholly terminated, (A) there shall be refunded or credited in the case of a person holding such stocks with respect to which a tax under this title has been paid, or (B) there shall be credited or abated in the case of a person holding such stocks with respect to which a tax under this title is payable, where such person is the processor liable for the payment of such tax, or (C) there shall be refunded or credited (but not before the tax has been paid) in the case of a person holding such stocks with respect to which a tax under this title is payable, where such person is not the processor liable for the payment of such tax, a sum in an amount equivalent to the processing tax which would have been payable with respect to the commodity from which processed if the processing had occurred on such date: Provided, That in the case of any commodity with respect to which there was any increase, effective prior to June 1, 1934, in the rate of the processing tax, no such refund, credit, or abatement, shall be in an amount which exceeds the equivalent of the initial rate of the processing tax in effect with respect to such commodity.

As amended by sec. 25 of Public, No. 320, 74th Congress, approved August 24, 1935.

(b) The tax imposed by subsection (a) shall not apply to the retail stocks of persons engaged in retail trade, held at the date the processing tax first takes effect; but such retail stocks shall not be deemed to include stocks held in a warehouse on such date, or such portion of other stocks held on such date as are not sold or otherwise disposed of within thirty days thereafter. [The tax refund or abatement provided in subsection (a) shall not apply to the retail stocks of persons engaged in retail trade, held on the date the processing tax is wholly terminated.] *Except as to flour and prepared*

flour, and cereal preparations made chiefly from wheat, as classified in Wheat Regulations, Series 1, Supplement 1, and as to any article processed wholly or in chief value from cotton, the tax refund, credit, or abatement provided in subsection (a) of this section shall not apply to the retail stocks of persons engaged in retail trade, nor to any article (except sugar) processed wholly or in chief value from sugar beets, sugarcane, or any product thereof, nor to any article (except flour, prepared flour and cereal preparations made chiefly from wheat, as classified in Wheat Regulations, Series 1, Supplement 1) processed wholly or in chief value from wheat, held on the date the processing tax is wholly terminated.

As amended by sec. 26 of Public, No. 320, 74th Congress, approved August 24, 1935.

(c) (1) Any sugar, imported prior to the effective date of a processing tax on sugar beets and sugarcane, with respect to which it is established (under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury) that there was paid at the time of importation a duty at the rate in effect on January 1, 1934, and (2) any sugar held on April 25, 1934, by, or to be delivered under a bona fide contract of sale entered into prior to April 25, 1934, to, any manufacturer or converter, for use in the production of any article (except sugar) and not for ultimate consumption as sugar, and (3) any article (except sugar) processed wholly or in chief value from sugar beets, sugarcane, or any product thereof, shall be exempt from taxation under subsection (a) of this section, but sugar held in customs custody or control on April 25, 1934, shall not be exempt from taxation under subsection (a) of this section, unless the rate of duty paid upon the withdrawal thereof was the rate of duty in effect on January 1, 1934. [The provisions of paragraph (2) of subsection (a) of this section shall not apply in the case of sugar beets or sugarcane or the products thereof.]

Stricken by sec. 20 (b) of Public, No. 320, 74th Congress, approved August 24, 1935.

(d) The Secretary of Agriculture is authorized to purchase, out of such proceeds of taxes as are available therefor, during the period this Act is in effect with respect to sugar beets and sugarcane, not in excess of three hundred thousand tons of sugar raw value from the surplus stocks of direct-consumption sugar produced in the United States beet-sugar area, at a price not in excess of the market price for direct consumption sugar on the date of purchase, and to dispose of such sugar by sale or otherwise, including distribution to any organization for the relief of the unemployed, under such conditions and at such times as will tend to effectuate the declared policy of section 8a of this Act. The sugar so purchased shall not be included in the quota for the United States beet-sugar area. All proceeds received by the Secretary of Agriculture, in the exercise of the powers granted hereby, are appropriated to be available to the Secretary of Agriculture for the purposes described in subsections (a) and (b) of section 12 of this Act.

[(C)] (*e*) Upon the sale or other disposition of any article processed wholly or in chief value from any commodity with respect to which the existing rate of the processing tax is to be increased, or decreased, that on the date such increase, or decrease, first takes effect with respect to the commodity, is held for sale or other disposition (including articles in transit) by any person, and upon the production of any article from a commodity in process on the date on which the rate of the processing tax is to be increased or decreased, there shall be made a tax adjustment as follows:

(1) Whenever, *subsequent to June 26, 1934*, the rate of the processing tax on the processing of the commodity generally or for any designated use or uses, or as to any designated product or products thereof for any designated use or uses, or as to any class of products, is decreased, there shall be credited or refunded to such person an amount equivalent to the difference between the rate of the processing tax payable or paid at the time immediately preceding the decrease in rate and the rate of the processing tax which would have been payable with respect to the commodity from which processed; if the processing had occurred on such date: *Provided, however*, That no such credit or refund shall be made *in the case of hogs* unless the rate of the processing tax immediately preceding said decrease is equal to, or less than, the rate of the processing tax in effect on the date on which any floor stocks tax was paid prior to the adoption of this amendment. *In the case of wheat the provisions of this paragraph and of paragraph (2) of this subsection shall apply to flour, prepared flour and cereal preparations made chiefly from wheat, as classified in Wheat Regulations, Series 1, Supplement 1 only; in the case of sugarcane and sugar beets the provisions of this paragraph and of paragraph (2) of this subsection shall apply to sugar only.*

Subsection "(C)" relettered to read subsection "(e)" by section 10 of Public, No. 20, 74th Congress, approved March 18, 1935. The other amendments above are made by section 2 (a) of Public, No. 320, 74th Congress, approved August 24, 1935.

(2) Whenever the rate of the processing tax on the processing of the commodity generally, or for any designated use or uses, or as to any designated product or products thereof for any designated use or uses, or as to any class of products, is increased, there shall be levied, assessed and collected a tax to be paid by such person equivalent to the difference between the rate of the processing tax payable or paid at the time immediately preceding the increase in rate and the rate of the processing tax which would be payable with respect to the commodity from which processed, if the processing had occurred on such date.

(3) Whenever the processing tax is suspended or is to be refunded pursuant to a certification of the Secretary of Agriculture to the Secretary of the Treasury, under section 15 (a) of this Act, the provisions of subdivision (1) [of subsection (c) of this section] *of this subsection* shall become applicable.

(4) Whenever the Secretary of Agriculture revokes any certification to the Secretary of the Treasury under section 15 (a) of this Act, the provisions of subdivision (2) [of subsection (c)] *of this subsection* shall become applicable.

(5) The provisions of this amendment shall be effective on and after June 1, 1934.

(f) The provisions of this section shall not be applicable with respect to rice.

As amended by sec. 10 of Public, No. 20, 74th Congress, approved March 18, 1935.

(g) No refund, credit, or abatement of any amount of any tax shall be made or allowed under this section, unless, within one hundred and twenty days after the right to such refund, credit, or abatement accrued, or within one hundred and twenty days after the date of the adoption of this amendment, whichever is the later, a claim for such refund, credit, or abatement (conforming to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled to such refund, credit, or abatement, and no such claim shall be allowed for an amount less than $10.

Added by sec. 27 (b) of Public, No. 320, 74th Congress, approved August 24, 1935.

EXPORTATIONS

SEC. 17. (a) [Upon the exportation to any foreign country (and/or to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam) of any product with respect to which a tax has been paid under this title, or of any product processed wholly or partly from a commodity with respect to which product or commodity a tax has been paid under this title, the tax due and paid shall be refunded. The refund shall be paid to the exporter or to the consignor named in the bill of lading under which the product is exported, as determined under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.] *Upon the exportation to any foreign country (and/or to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam) of any product processed wholly or partly from a commodity with respect to which product or commodity a tax has been paid or is payable under this title, the tax due and payable or due and paid shall be credited or refunded. Under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, the credit or refund shall be allowed to the consignor named in the bill of lading under which the product is exported or to the shipper or to the person liable for the tax provided the consignor waives any claim thereto in favor of such shipper or person liable for the tax. In the case of rice, a tax due under this title which has been paid by a tax-payment warrant shall be deemed for the purposes of this subsection to have been paid; and with respect to any refund authorized under this section, the amount scheduled by the Commissioner of Internal Revenue for refunding shall be paid, any provision of law notwithstanding.* In the case of sugar beets and sugarcane, this subsection shall be applicable to exports of products

thereof to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam only if this title with respect to sugar beets and sugarcane is not made applicable thereto. The term "product" includes any product exported as merchandise, or as a container for merchandise, or otherwise.

As amended by sec. 11 of Public, No. 20, 74th Congress, approved March 18, 1935; and by sec. 28 of Public, No. 320, 74th Congress, approved August 24, 1935.

(b) Upon the giving of bond satisfactory to the Secretary of the Treasury for the faithful observance of the provisions of this title requiring the payment of taxes, any person shall be entitled, without payment of the tax, to process for such exportation any commodity with respect to which a tax is imposed by this title, or to hold for such exportation any article processed wholly or partly therefrom.

EXISTING CONTRACTS

SEC. 18. (a) If (1) any processor, jobber, or wholesaler has, prior to the date a tax with respect to any commodity is first imposed under this title, made a bona fide contract of sale for delivery on or after such date, of any article processed wholly or in chief value from such commodity, and if (2) such contract does not permit the addition to the amount to be paid thereunder of the whole of such tax, then (unless the contract prohibits such addition) the vendee shall pay so much of the tax as is not permitted to be added to the contract price.

(b) Taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated and shall be collected and paid to the United States by the vendor in the same manner as other taxes under this title. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner of Internal Revenue who shall cause collections of such taxes to be made from the vendee.

COLLECTION OF TAXES

SEC. 19. (a) The taxes provided in this title shall be collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury. Such taxes shall be paid into the Treasury of the United States.

(b) All provisions of law, including penalties, applicable with respect to the taxes imposed by section 600 of the Revenue Act of 1926, and the provisions of section 626 of the Revenue Act of 1932, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable in respect of taxes imposed by this title: *Provided*, That the Secretary of the Treasury is authorized to permit postponement, for a period not exceeding one hundred and eighty days, of the payment of *not exceeding three-fourths of the amount of the* taxes covered by any return under this title, *but postponement of all taxes covered by returns under this title for a period not ex-*

ceeding one hundred and eighty days may be permitted in cases in which the Secretary of the Treasury authorizes such taxes to be paid each month on the amount of the commodity marketed during the next preceding month:

As amended by sec. 29 (a) of Public, No. 320, 74th Congress, approved August 24, 1935.

(c) In order that the payment of taxes under this title may not impose any immediate undue financial burden upon processors or distributors, any processor or distributor subject to such taxes shall be eligible for loans from the Reconstruction Finance Corporation under section 5 of the Reconstruction Finance Corporation Act.

(*d*) *Under regulations made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, any person required pursuant to the provisions of this title to file a return may be required to file such return and pay the tax shown to be due thereon to the collector of internal revenue for the district in which the processing was done or the liability was incurred. Whenever the Commissioner of Internal Revenue deems it necessary, he may require any person or class of persons handling or dealing in any commodity or product thereof, with respect to which a tax is imposed under the provisions of this title, to make a return, render under oath such statements, or to keep such records, as the Commissioner deems sufficient to show whether or not such person, or any other person, is liable for the tax.*

Added by sec. 29 (b) of Public, No. 320, 74th Congress, approved August 24, 1935.

SEC. 20. (a) Whoever in connection with the purchase of, or offer to purchase, any commodity, subject to any tax under this title, or which is to be subjected to any tax under this title, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any amount deducted from the market price or the agreed price of the commodity consists of a tax imposed under this title, or (2) ascribing a particular part of the deduction from the market price or the agreed price of the commodity, to a tax imposed under this title, knowing that such statement is false or that the tax is not so great as the amount deducted from the market price or the agreed price of the commodity, ascribed to such tax, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000 or by imprisonment for not exceeding six months, or both.

(b) Whoever in connection with the processing of any commodity subject to any tax under this title, whether commercially, for toll, upon an exchange, or otherwise, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any part of the charge for said processing, whether commercially, for toll, upon an exchange, or otherwise, consists of a tax imposed under this title, or (2) ascribing a particular part of the charge for processing, whether commercially, for toll, upon an exchange, or otherwise, to a tax imposed under this title, knowing that such statement is false, or that the tax is not so great as the amount charged for said processing ascribed to such tax, shall be guilty of a misde-

meanor, and upon conviction thereof, shall be punished by a fine of not more than $1,000 or by imprisonment for not exceeding six months, or both.

(c) Whoever in connection with any settlement, under a contract to buy any commodity, and/or to sell such commodity, or any product or byproduct thereof, subject to any tax under this title, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any amount deducted from the gross sales price, in arriving at the basis of settlement under the contract, consists of a tax under this title, or (2) ascribing a particular amount deducted from the gross sales price, in arriving at the basis of settlement under the contract, to a tax imposed under this title, knowing that such statement is false, or that the tax is not so great as the amount so deducted and/or ascribed to such tax, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than $1,000 or by imprisonment for not exceeding six months, or both.

Sec. 21. (a) No suit, action, or proceeding (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (d) of this section, may be reserved in the court's order.

(b) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regulations of the Secretary with the approval of the President prior to the date of the adoption of this amendment, are hereby legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which have accrued and remain unpaid on the date of the adoption of this amendment shall be assessed and collected pursuant to section 19, and to the provisions of law made applicable thereby. Nothing in this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary of Agriculture or of the President done or made prior to the date of the adoption of this amendment.

(c) The making of rental and benefit payments under this title, prior to the date of the adoption of this amendment, as determined,

prescribed, proclaimed and made effective by the proclamations of the Secretary of Agriculture or of the President or by regulations of the Secretary, and the initiation, if formally approved by the Secretary of Agriculture prior to such date of adjustment programs under section 8 (1) of this title, and the making of agreements with producers prior to such date, and the adoption of other voluntary methods prior to such date, by the Secretary of Agriculture under this title, and rental and benefit payments made pursuant thereto, are hereby legalized and ratified, and the making of all such agreements and payments, the initiation of such programs, and the adoption of all such methods prior to such date are hereby legalized, ratified, and confirmed as fully to all intents and purposes as if each such agreement, program, method, and payment had been specifically authorized and made effective and the rate and amount thereof fixed specifically by prior Act of Congress.

(d) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be refunded or credited to any person (not a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (a) and (b) of section 16, had the tax terminated by proclamation pursuant to the provisions of section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date

of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish to the satisfaction of the Commissioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held invalid a claim therefor (conforming to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2) no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, on jurisdiction of such courts based upon the amount in controversy.

(e) In connection with the establishment, by any claimant, of the facts required to be established in subsection (d) of this section, the Commissioner of Internal Revenue is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda, relative to any matter affecting the findings to be made by the Commissioner pursuant to subsection (d) of this section, to require the attendance of the claimant or of any officer or employee of the claimant, or the attendance of any other person having knowledge in the premises, and to take, or cause to be taken, his testimony with reference to any such matter, with power to administer oaths to such person or persons. It shall be lawful for the Commissioner, or any collector designated by him, to summon witnesses on behalf of the United States or of any claimant to appear before the Commissioner, or before any person designated by him, at a time and place named in the summons, and to produce such books, papers, correspondence, memoranda, or other

records as the Commissioner may deem relevant or material, and to give testimony or answer interrogatories, under oath, relating to any matter affecting the findings to be made by the Commissioner pursuant to subsection (d) of this section. The provisions of Revised Statutes 3174 and of Revised Statutes 3175 shall be applicable with respect to any summons issued pursuant to the provisions of this subsection. Any witness summoned under this subsection shall be paid, by the party on whose behalf such witness was summoned, the same fees and mileage as are paid witnesses in the courts of the United States. All information obtained by the Commissioner pursuant to this subsection shall be available to the Secretary of Agriculture upon written request therefor. Such information shall be kept confidential by all officers and employees of the Department of Agriculture, and any such officer or employee who violates this requirement shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both, and shall be removed from office.

(f) No refund, credit, or abatement shall be made or allowed of the amount of any tax, under section 15, or section 17, unless, within one year after the right to such refund, credit, or abatement has accrued, a claim for such refund, credit, or abatement (conforming to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe). is filed by the person entitled to such refund, credit, or abatement, except that if the right to any such refund, credit, or abatement accrued prior to the date of the adoption of this amendment, then such one year period shall be computed from the date of this amendment. No interest shall be allowed or paid, or included in any judgment, with respect to any such claim for refund or credit.

(g) The provisions of section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax, or any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of section 317 of the Tariff Act of 1930.

Added by sec. 30 of Public, No. 320, 74th Congress, approved August 24, 1935.

IMPORTS

SEC. 22. (a) Whenever the President has reason to believe that any one or more articles are being imported into the United States under such conditions and in sufficient quantities as to render or tend to render ineffective or materially interfere with any program or operation undertaken, or to reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which an adjustment program is in operation, under this title, he shall cause an immediate investigation to be made

by the United States Tariff Commission, which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties and shall be conducted subject to such regulations as the President shall specify.

(b) If, on the basis of such investigation and report to him of findings and recommendations made in connection therewith, the President finds the existence of such facts, he shall by proclamation impose such limitations on the total quantities of any article or articles which may be imported as he finds and declares shown by such investigation to be necessary to prescribe in order that the entry of such article or articles will not render or tend to render ineffective or materially interfere with any program or operation undertaken, or will not reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which an adjustment program is in operation, under this title: Provided, That no limitation shall be imposed on the total quantity of any article which may be imported from any country which reduces such permissible total quantity to less than 50 per centum of the average annual quantity of such article which was imported from such country during the period from July 1, 1928, to June 30, 1933, both dates inclusive.

(c) No import restriction proclaimed by the President under this section nor any revocation, suspension, or modification thereof shall become effective until fifteen days after the date of such proclamation, revocation, suspension, or modification.

(d) Any decision of the President as to facts under this section shall be final.

(e) After investigation, report, finding, and declaration in the manner provided in the case of a proclamation issued pursuant to subsection (b) of this section, any proclamation or provision of such proclamation may be suspended by the President whenever he finds that the circumstances requiring the proclamation or provision thereof no longer exist, or may be modified by the President whenever he finds that changed circumstances require such modification to carry out the purposes of this section.

Added by sec. 31 of Public, No. 320, 74th Congress, approved August 24, 1935.

RELATED LEGISLATION

[PUBLIC, No. 320, 74TH CONGRESS, APPROVED AUGUST 24, 1935]

(Extracts)

SEC. 38. Nothing contained in this Act shall (a), invalidate any marketing agreement or license in existence on the date of the enactment hereof, or any provision thereof, or any act done pursuant thereto, either before or after the enactment of this Act, or (b) impair any remedy provided for on the date of the enactment thereof for the enforcement of any such marketing agreement or license, or (c) invalidate any agreement entered into pursuant to section 8 (1) of the Agricultural Adjustment Act prior to the enactment of this Act, or subsequent to the enactment of this Act in connection with a program the initiation of which has been formally approved by the Secretary of Agriculture under such section 8 (1) prior to the enactment of this Act, or any act done or agreed to be done or any payment made or agreed to be made in pursuance of any such agreement, either before or after the enactment of this Act, or any change in the terms and conditions of any such agreement, or any voluntary arrangements or further agreements which the Secretary finds necessary or desirable in order to complete or terminate such program pursuant to the declared policy of the Agricultural Adjustment Act: *Provided*, That the Secretary shall not prescribe, pursuant to any such agreement or voluntary arrangement, any adjustment in the acreage or in the production for market of any basic agricultural commodity to be made after July 1, 1937 except pursuant to the provisions of section 8 of the Agricultural Adjustment Act as amended by this Act.

Sec. 32. There is hereby appropriated for each fiscal year beginning with the fiscal year ending June 30, 1936 an amount equal to 30 per centum of the gross receipts from duties collected under the customs laws during the period January 1 to December 31, both inclusive, preceding the beginning of each such fiscal year. Such sums shall be maintained in a separate fund and shall be used by the Secretary of Agriculture only to (1) encourage the exportation of agricultural commodities and products thereof by the payment of benefits in connection with the exportation thereof or of indemnities for losses incurred in connection with such exportation or by payments to producers in connection with the production of that part of any agricultural commodity required for domestic consumption; (2) encourage the domestic consumption of such commodities or products by diverting them, by the payment of benefits or indemnities or by other means, from the normal channels of trade and commerce; and (3) finance adjustments in the quantity planted or produced for market of agricultural commodities. The amounts appro-

priated under this section shall be expended for such of the above-specified purposes, and at such times, in such manner, and in such amounts as the Secretary of Agriculture finds will tend to increase the exportation of agricultural commodities and products thereof, and increase the domestic consumption of agricultural commodities and products thereof: *Provided*, That no part of the funds appropriated by this section shall be expended pursuant to clause (3) hereof unless the Secretary of Agriculture determines that the expenditure of such part pursuant to clauses (1) and (2) is not necessary to effectuate the purposes of this section: *Provided further*, That no part of the funds appropriated by this section shall be used for the payment of benefits in connection with the exportation of unmanufactured cotton.

Sec. 37. There is hereby authorized to be appropriatd the sum of $40,000,000, of which sum $10,000,000 is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to enable the Secretary of Agriculture, under rules and regulations to be promulgated by him and upon such terms as he may prescribe, to eliminate diseased dairy and beef cattle, including cattle suffering from tuberculosis or Bang's disease, and to make payments to owners with respect thereto. The Secretary of Agriculture is authorized to use for scientific experimentation and efforts to eradicate disease in cattle, as much as he finds advisable of the funds appropriated by or in pursuance of the authorization contained in this section and the funds appropriated by the second paragraph of Public Resolution Numbered 27, Seventy-third Congress, approved May 25, 1934, to carry out section 6 of the Act entitled "An Act to amend the Agricultural Adjustment Act so as to include cattle and other products as basic agricultural commodities, and for other purposes", approved April 7, 1934. The sums appropriated or reappropriated by this section shall remain available until June 30, 1936, and such sums and the sums appropriated in pursuance of the authorization contained in this section shall be available to carry out the purposes of both this section and such section 6, and may be used for all necessary expenses in connection therewith, including the employment of persons and means in the District of Columbia and elsewhere. The unexpended balance of the funds appropriated by the second paragraph of such Public Resolution Numbered 27 to carry out the purposes of section 2 of such Act of April 7, 1934, shall remain available for the purposes of such section 2 until June 30, 1936.

Sec. 39. (d) The action of the Secretary of Agriculture in ascertaining and proclaiming, pursuant to section 3 (a) and (b) of such Act, as amended, 10,500,000 bales as the maximum amount of cotton of the crop harvested in the crop year 1935–1936 that may be marketed exempt from payment of the tax levied by such Act, as amended, is hereby legalized and ratified, and all apportionments and other action taken pursuant to such ascertainment and proclamation are legalized and ratified and confirmed as fully to all intents and purposes as if such amount had been fixed and such apportionments and action had been authorized and made effective specifically by Act of Congress.

Sec. 55. There is hereby made available, out of any money appropriated by the Emergency Relief Appropriation Act of 1935, such amount as the President may allot for the development of a national program of land conservation and land utilization. The sums so allotted may be used, in the discretion and under the direction of the President, for the acquisition of submarginal lands and their use for such public purposes as the President shall prescribe.

In carrying out the provisions of this section, the President is authorized:

(a) To make contracts and grants; and

(b) To acquire, by purchase, any real property or any interest therein (with or without reservations) in accordance with the policy herein set forth.

ANTI-HOG-CHOLERA SERUM AND HOG-CHOLERA VIRUS

Sec. 56. It is hereby declared to be the policy of Congress to insure the maintenance of an adequate supply of anti-hog-cholera serum and hog-cholera virus by regulating the marketing of such serum and virus in interstate and foreign commerce, and to prevent undue and excessive fluctuations and unfair methods of competition and unfair trade practices in such marketing.

Sec. 57. In order to effectuate the policy declared in section 56 of this Act the Secretary of Agriculture shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements with manufacturers and others engaged in the handling of anti-hog-cholera serum and hog-cholera virus only with respect to such handling as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects interstate or foreign commerce in such serum and virus. Such persons are hereafter in this Act referred to as "handlers." The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful.

Sec. 58. Marketing agreements entered into pursuant to section 57 of this Act shall contain such one or more of the following terms and conditions and no others as the Secretary finds, upon the basis of the hearing provided for in section 57, will tend to effectuate the policy declared in section 56 of this Act:

(a) One or more of the terms and conditions specified in subsection (7) of section 8c of the Agricultural Adjustment Act, as amended.

(b) Terms and conditions requiring each manufacturer to have available on May 1 of each year a supply of completed serum equivalent to not less than 40 per centum of his previous year's sales.

Sec. 59. Whenever all the handlers of not less than 75 per centum of the volume of anti-hog-cholera serum and hog-cholera virus which is handled in the current of interstate or foreign commerce, or so as directly to burden, obstruct, or affect interstate or foreign commerce, have signed a marketing agreement entered into with the Secretary of Agriculture pursuant to section 57 of this Act, the Secretary of Agriculture shall issue an order which shall regulate only such han-

dling in the same manner as, and contain only such terms and conditions as are contained in such marketing agreement, and shall from time to time amend such order in conformance with amendments to such marketing agreement. Such order shall terminate upon termination of such marketing agreement as provided in such marketing agreement.

SEC. 60. Subject to the policy declared in section 56 of this act, the provisions of subsections (6), (7), (8), and (9) of section 8a and of subsections (14) and (15) of section 8c of the Agricultural Adjustment Act, as amended, are hereby made applicable in connection with orders issued pursuant to section 59 of this Act, and the provisions of section 8d of the Agricultural Adjustment Act, as amended, are hereby made applicable in connection with marketing agreements entered into pursuant to section 57 and orders issued pursuant to section 59 of this Act. The provisions of subsections (a), (b) (2), (c), (f), (h), and (i) of section 10 of the Agricultural Adjustment Act, as amended, are hereby made applicable in connection with the administration of sections 56 to 60, inclusive, of this Act.

DEPARTMENT OF AGRICULTURE APPROPRIATION ACT, 1936

[PUBLIC—No. 62—74TH CONGRESS, APPROVED, MAY 17, 1935]

(Extract)

SEC. 2. The processing tax authorized by Public Act numbered 10, Seventy-third Congress (48 Stat. 31), when levied upon cotton, shall be payable ninety days after the filing of the processor's report: *Provided*, That, under regulations to be prescribed by the Secretary of the Treasury, the time for payment of such tax upon cotton may be extended, but in no case to exceed six months from the date of the filing of the report.

BANKHEAD COTTON ACT OF 1934, AS AMENDED, AS OF AUGUST 27, 1935 [1]

AN ACT

To place the cotton industry on a sound commercial basis, to prevent unfair competition and practices in putting cotton into the channels of interstate and foreign commerce, to provide funds for paying additional benefits under the Agricultural Adjustment Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DECLARATION OF POLICY

That in order to relieve the present acute economic emergency in that part of the agricultural industry devoted to cotton production and marketing by diminishing the disparity between prices paid to cotton producers and persons engaged in cotton marketing and prices of other commodities and by restoring purchasing power to such producers and persons so that the restoration of the normal exchange in interstate and foreign commerce of all commodities may be fostered, and to raise revenue to enable the payment of additional benefits to cotton producers under the Agricultural Adjustment Act—

It is hereby declared to be the policy of Congress to promote the orderly marketing of cotton in interstate and foreign commerce; to enable producers of such commodity to stabilize their markets against undue and excessive fluctuations, and to preserve advantageous markets for such commodity, and to prevent unfair competition and practices in putting cotton into the channels of interstate and foreign commerce, and to more effectively balance production and consumption of cotton.

PERIOD OF APPLICABILITY

SEC. 2. The provisions of this Act shall be effective only with respect to the crop years 1934–1935, but if the President finds that the economic emergency in cotton production and marketing will continue or is likely to continue to exist so that the application of this Act with respect to the crop year 1935–1936 *or the crop year 1936–1937 or the crop year 1937–1938* is imperative in order to carry out the policy declared in section 1, he shall so proclaim, and this Act shall be effective with respect to the crop year 1935–1936 *or the crop year 1936–1937 or the crop year 1937–1938*. If at any time prior to the end of the crop year 1935–1936 *or the crop year 1936–1937 or the crop year 1937–1938*, the President finds that the economic emergency in cotton production and marketing has ceased to exist, he shall so proclaim, and no tax under this Act shall be levied with

[1] Throughout the text of this document italics are used to indicate matter added by the 74th Congress by way of amendment to the Bankhead Cotton Act of 1934, Public, No. 169, 73d Congress, 48 Stat. 598, as previously amended. In instances where the language was stricken or changed, heavy black brackets are used to indicate deleted matter.

respect to cotton harvested after the effective date of such proclamation.

As amended by sec. 39 (a) of Public, No. 320, 74th Congress, approved August 24, 1935.

SEC. 3. (a) When the Secretary of Agriculture finds, for the crop year 1935–1936, *or the crop year 1936–1937 or the crop year 1937–1938*, if the provisions of this Act are effective for such crop year, that two thirds of the persons who have the legal or equitable right as owner, tenant, share-cropper, or otherwise to produce cotton on any cotton farm, or part thereof, in the United States for such crop year favor a levy of a tax on the ginning of cotton in excess of an allotment made to meet the probable market requirements, and determines that such a tax is required to carry out the policy declared in section 1, the Secretary shall ascertain from an investigation of the available supply of cotton and the probable market requirements of the quantity of cotton that should be allotted, in accordance with the policy declared in section 1, for marketing in the channels of interstate and foreign commerce, from production of cotton during the succeeding cotton crop year, exempt from the payment of taxes thereon. *In ascertaining the sentiment of the producers with respect to the crop year 1936–1937 or the crop year 1937–1938, the vote in favor of the compulsory tax features of this Act, by two-thirds of the producers voting, shall be deemed sufficient for the purposes of this subsection.*

As amended by sec. 39 of Public, No. 320, 74th Congress, approved August 24, 1935.

(b) The allotment so ascertained shall be proclaimed by the Secretary of Agriculture at least sixty days prior to the beginning of such succeeding crop year and shall be apportioned by him as herein provided.

(c) For the crop year 1934–1935 ten million bales is hereby fixed as the maximum amount of cotton of the crop harvested in the crop year 1934–1935, that may be marketed exempt from payment of the tax herein levied. Except as provided in section 2, the allotment plan and the tax is hereby declared to be in effect for the crop year 1934–1935.

TAX AND EXEMPTIONS

SEC. 4. (a) There is hereby levied and assessed on the ginning of cotton hereafter harvested during a crop year with respect to which this Act is in effect, a tax at the rate per pound of the lint cotton produced from ginning, of 50 per centum of the average central market price per pound of lint cotton, but in no event less than 5 cents per pound. If the cotton was harvested during a crop year with respect to which the tax is in effect, the tax shall apply even if the ginning occurs after the expiration of such crop year.

(b) The average central market price, per pound of lint cotton, shall be the average price per pound of basis seven-eighths-inch middling spot cotton on the ten spot cotton markets (designated by the Secretary of Agriculture) as determined and proclaimed from time to time by the Secretary of Agriculture. The average central market price determined and proclaimed shall be the base for determining the rate of the tax until a different average central market

price for lint cotton is determined and proclaimed by the Secretary of Agriculture.

(c) Every person ginning any cotton subject to tax under this Act (whether as agent of the owner or otherwise) and every other person liable for tax under this Act shall make monthly returns under oath in duplicate and pay the taxes imposed by this Act to the collector for the district in which the ginning is done, or to such other person as such collector may direct. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary of the Treasury, may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum a month from the time when the tax became due until paid.

(d) When the Secretary of Agriculture does not proclaim an allotment of cotton for a crop year as provided in section 3 of this Act, the tax shall not apply with respect to cotton harvested during such crop year but shall apply to cotton harvested during the next crop year for which, with the approval of the President, the Secretary makes an allotment under such section.

(e) No tax shall be imposed under this Act with respect to—

(1) Cotton harvested by any publicly owned experimental station or agricultural laboratory.

(2) An amount of cotton harvested in any crop year from each farm equal to its allotment.

(3) Cotton harvested prior to the crop year 1934–1935.

(4) Cotton having a staple of one and one half inches in length or longer.

(f) The tax shall not be collected upon the ginning of cotton which is to be stored by the producer thereof either on the farm or at such other place as may be permitted by regulations prescribed by the Secretary of Agriculture and the Secretary of the Treasury. In such cases, the payment of the tax shall be postponed, but shall be paid at the time when bale tags are secured for such cotton. Bale tags may be secured for any of such cotton at any time after ginning (1) upon the payment to such person as the Commissioner may direct, of the amount of tax which would have been payable at the time of ginning, or (2) upon the surrender of certificates of exemption covering an amount of cotton not less than the amount of such cotton. Until bale tags are secured for such cotton, such cotton shall be subject to a lien in favor of the United States for the amount of the tax payable with respect to the ginning of such cotton. The right to postponement of the payment of the tax under this subsection shall be established in accordance with such regulations as the Secretary of Agriculture and the Secretary of the Treasury may prescribe. The Commissioner, with the approval of the Secretary of the Treasury, shall prescribe regulations providing for stamping the containers of such cotton so as to indicate the time of ginning and the amount of tax payable with respect thereto.

(g) The right to exemption under paragraph (2) of subsection (e) shall be evidenced by a certificate of exemption issued as herein

provided, which certificate of exemption shall be conclusive proof of the right to such exemption.

(*h*) *The Secretary of Agriculture is directed to exempt by regulation from the payment of the tax on the ginning of cotton as levied under authority of this Act, an amount of lint cotton not in excess of one hundred and ten pounds, produced by or for any producer and retained for domestic use in his household.*

Added by sec. 42 of Public, No. 320, 74th Congress, approved August 24, 1935.

APPORTIONMENT

SEC. 5. (a) When an allotment is made, in order to prevent unfair competition and unfair trade practices in marketing cotton in the channels of interstate and foreign commerce, the Secretary of Agriculture shall apportion to the several cotton-producing States the number of bales the marketing of which may be exempt from the tax herein levied, which shall be determined by the ratio of the average number of bales produced in each State during the five crop years preceding the passage of this Act to the average number of bales produced in all the States during the same period: *Provided, however,* That no State shall receive an allotment of less than two hundred thousand bales of cotton if in any one year of five years prior to this date the production of the State equalled two hundred and fifty thousand bales: *Provided further, That no State shall receive an allotment for any crop year beginning with the crop year 1935–1936 of less than four thousand bales of cotton if during any one of the ten crop years prior to the date of the enactment of this Act the production of such State exceeded five thousand bales. And be it further provided that after the year 1935 no State shall receive an allotment of less than 80,000 bales of cotton if in any one year of five years prior to the date of the passage of said Act the production of the State equaled 100,000 bales.* It is prima facie presumed that all cotton and its processed products will move in interstate or foreign commerce.

Amended by sec. 39 (c) of Public, No. 320, 74th, Congress, approved August 24, 1935; and by Public Resolution No. 47, 74th Congress, approved August 9, 1935.

(b) The amount allotted to each State (less the amounts allotted under section 8) shall be apportioned by the Secretary of Agriculture to the several counties in such State on a basis and ratio, applied to such counties, similar to that set forth in subsection (a), except that, for the purposes of this subsection, there shall be excluded from the calculation of the average production of cotton in any county an amount of cotton produced in such county during any crop year or years during which the Secretary of Agriculture finds that production of cotton in such county was reduced so substantially by unusual drought, storm, flood, insect pests, or other uncontrollable natural cause that the inclusion of the cotton produced in such crop year or years would result in an apportionment to such county based upon an abnormally low production of such county, and in such cases the average production shall be calculated on the basis of the crop years and production of the years remaining of the period set forth in subsection (a).

APPLICATIONS FOR CERTIFICATES

SEC. 6. A producer of cotton desiring to secure a tax-exemption certificate may file an application therefor with the agent designated by the Secretary of Agriculture, accompanied by a statement under oath showing the approximate quantity of cotton produced on the lands presently owned, rented, share-cropped, or controlled by the applicant during a representative period fixed by the Secretary of Agriculture, and also the number of acres of land in said lands in actual cultivation for the three preceding years, and the quantity of cotton, in the best judgment of the applicant, said lands would have produced if all the cultivated land had been planted to cotton. Said application shall state any other facts which may be required by the Secretary of Agriculture. No certificate of exemption shall be issued and no allotment shall be made to any producer unless he agrees to comply with such conditions and limitations on the production of agricultural commodities by him as the Secretary of Agriculture may, from time to time, prescribe to assure the cooperation of such producer in the reduction programs of the Agricultural Adjustment Administration and to prevent expansion on lands leased by the Government of competitive production by such producer of agricultural commodities other than cotton and the allotment of and certificates of exemption issued to any producer shall be subject to revocation on violation by him of such conditions and limitations, and no criminal penalties shall apply to the violation of this provision.

SEC. 7. (a) The amount of cotton allotted to any county pursuant to section 5 (b) shall be apportioned by the Secretary of Agriculture to farms on which cotton has been grown within such county. Such allotments to any farm shall be made upon application therefor and may be made by the Secretary based upon—

(1) A percentage of the average annual cotton production of the farm for a fair representative period; or

(2) By ascertaining the amount of cotton the farm would have produced during a fair representative period if all the cultivated land had been planted to cotton, and then reducing such amount by such percentage (which shall be applied uniformly within the county to all farms to which the allotment is made under this paragraph) as will be sufficient to bring the total of the farm allotments within the county's allotment; or

(3) Upon such basis as the Secretary of Agriculture deems fair and just, and will apply to all farms to which the allotment is made under this paragraph uniformly, within the county, on the basis or classification adopted. The Secretary of Agriculture, in determining the manner of allotment to individual farmers, shall provide that the farmers who have voluntarily reduced their cotton acreage shall not be penalized in favor of those farmers who have not done so.

(b) After the crop year 1934–1935 the apportionment shall not be on the basis set out in paragraph (1) of subsection (a) of this section.

(c) The total allotment to farms in each county under this section shall not exceed the approximate number of bales allotted to that county under section 5 (b).

(d) For each crop year subsequent to the crop year 1934–1935 in which this Act is in effect the Secretary of Agriculture shall make

(1) to each farm with an established average production for the applicable base period of 956 pounds or less of lint cotton an allotment equal to the full amount of such production and (2) to each farm with an established average production for such base period of more than 956 pounds of lint cotton an allotment of not less than 956 pounds. For each crop year subsequent to the crop year 1935–1936, the amounts of each such allotment (and for the crop year 1935–1936 and subsequent crop years, the additional amount required for apportionment under the provisions of the Public Resolution entitled "Public Resolution To provide for certain State allotments under the Cotton Control Act") which is in excess of the allotment which, without regard to this subsection or such Public Resolution, would have been made to any farm, shall be in addition to the national allotment and the allotments to the State and county in which such farm is situated. The first sentence of this subsection shall not be held to increase any allotment to any farm for the crop year 1935–1936 which allotment was made under regulations of the Secretary of Agriculture prior to the date of the adoption of this amendment, or to require any reallotment.

Added by sec. 39 of Public, No. 320, 74th Congress, approved August 24, 1935.

SEC. 8. Whenever an allotment is made pursuant to section 3, not to exceed 10 per centum of the number of bales allotted to each State shall be deducted from the number of bales allotted to such State, and allotted in such State—

(a) To producers of cotton on farms where for the preceding three years less than one third of the cultivated land on such farms has been planted to cotton;

(b) To producers of cotton on farms not previously used in cotton production;

(c) To producers of cotton on farms where, for the preceding five years, normal cotton production has been reduced by reason of drought, storm, flood, insect pests, or other uncontrollable natural cause; and

(d) To producers of cotton on farms where, for the preceding three years, acreage theretofore planted to cotton has been voluntarily reduced so that the amount of reduction in cotton production on such farms is greater than the amount which the Secretary finds would have been an equitable reduction applicable to such farms in carrying out a reasonable reduction program.

The allotments provided for in this section shall be in addition to the amounts apportioned to the counties under section 5 (b).

EXEMPTION CERTIFICATES

SEC. 9. (a) Exemption certificates shall be issued by the Secretary of Agriculture, upon application therefor, but only upon proof satisfactory to the Secretary that the producer is entitled thereto pursuant to this Act and the regulations thereunder. Any certificate erroneously issued shall be void upon a demand in writing for its return made by the Secretary of Agriculture to the person to whom such certificate was issued.

(b) The right to a certificate of exemption shall be evidenced in such manner as the Secretary of Agriculture may by regulations prescribe.

(c) The certificate of exemption shall specify the amount of cotton exempt from the tax under section 4 (e) (2).

(d) Any and all certificates of exemption may be transferred or assigned in whole or in part in such manner as the Secretary of Agriculture may prescribe and shall be issued with detachable coupons or in such other form or forms to be prescribed by the Secretary of Agriculture as will facilitate such transfer or assignment. *No rule or regulation of the Secretary of Agriculture shall prohibit the transfer or assignment by a cotton producer of certificates issued or reissued to him if such transfer or assignment is to another cotton producer who is a resident of the same State.* Any person who, in violation of the regulations made by the Secretary of Agriculture, (1) secures certificates of exemption or bale tags from another by sharp practices, or (2) speculates in certificates of exemption or bale tags, and any person securing certificates of exemption or bale tags from another person by fraud or coercion shall, upon conviction thereof, be fined not more than $1,000 or sentenced to not more than one year's imprisonment, or both.

As amended by sec. 41 of Public, No. 320, 74th Congress, approved August 24, 1935.

IDENTIFICATION OF TAX-PAID OR EXEMPT COTTON

SEC. 10. (a) Upon the payment of the tax on any cotton, or the surrender of exemption certificates covering cotton, the collector receiving such payment or certificates shall deliver to the person so paying or surrendering an appropriate number of bale tags which shall be affixed to such cotton.

(b) All cotton imported from a foreign country (including the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam) shall be packed and stamped, tagged, or otherwise identified, in addition to any import stamp indicating inspection at the customhouse, before such cotton is withdrawn therefrom.

(c) Every person who, at the time the tax becomes effective in any crop year, holds for sale (or use in the manufacture or production of an article intended for sale) any lint cotton in bales harvested during a year with respect to which the tax was not in effect may, upon application within fifteen days after the tax becomes effective, and any publicly owned experimental station or agricultural laboratory may, upon application at the time of ginning cotton harvested by it, receive an appropriate number of bale tags. Such bale tags shall be promptly affixed to the bales of lint cotton so held.

(d) In the case of any cotton in existence at the beginning of any crop year with respect to which the tax becomes effective and owned, held, or controlled by the United States, or any department or agency thereof, the Commissioner shall supply bale tags therefor free of charge, upon application by the head of the department or agency. Upon application of the Secretary of Agriculture, bale tags shall be

issued free of charge for cotton held in the 1933 Cotton Producers' Pool. Bale tags issued under this section shall be securely affixed to such cotton.

DESTRUCTION OF MEANS OF IDENTIFICATION

SEC. 11. Every person emptying or breaking any bale stamped, tagged, or otherwise identified under the provisions of this Act shall, at the time of emptying or breaking such bale, destroy the bale tag.

REGULATIONS BY THE COMMISSIONER

SEC. 12. The Commissioner, with the approval of the Secretary of the Treasury, shall prescribe (a) regulations with respect to the time and manner of applying for, issuing, affixing, and destroying bale tags, and the method of accounting for receipts from the sale of and for the use of such bale tags, and (b) such other regulations as he shall deem necessary for the enforcement of the taxing provisions of this Act.

INFORMATION RETURNS

SEC. 13. (a) All persons, in whatever capacity acting, including producers, ginners, processors of cotton, and common carriers, having information with respect to cotton produced, may be required to make a return in regard thereto, setting forth the amount of cotton delivered, the name and address of the person who delivered said cotton, the amount of lint cotton produced therefrom, and any other and further information which the Commissioner, with the approval of the Secretary of the Treasury and the Secretary of Agriculture, shall by regulations prescribe as necessary for the proper administration of the tax. Any person required to make such return shall render a true and accurate return to the Commissioner.

(b) Any person willfully failing or refusing to file such a return, or filing a willfully false return, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $1,000 or by imprisonment not exceeding one year, or both.

GENERAL AND PENAL PROVISIONS

SEC. 14. (a) All provisions of law, including penalties, applicable with respect to the taxes imposed by section 800 of the Revenue Act of 1926, shall, insofar as applicable and not inconsistent with the provisions of this Act, be applicable with respect to taxes imposed by this Act.

(b) Except as may be permitted by regulations prescribed by the Commissioner, with the approval of the Secretary of the Treasury, with due regard for the protection of the revenue, no person shall: (1) Transport, except for storing or warehousing, under the provisions of section 4 (f) beyond the boundaries of the county where produced any lint cotton to which a bale tag issued under this Act is not attached; or (2) sell, purchase, or open any bale of lint cotton to which a bale tag issued under this Act is not attached.

(c) No seed cotton harvested during a crop year with respect to which the tax is in effect shall be exported from the United States or any possession thereof to which this Act applies to any possession of the United States to which this Act does not apply or to any foreign country.

(d) Any person who willfully violates any provision of this Act, or who willfully fails to pay, when due, any tax imposed under this Act, or who, with intent to defraud, falsely makes, forges, alters, or counterfeits any bale tag or certificate of exemption made or used under this Act, or who uses, sells, or has in his possession any such forged, altered, or counterfeited bale tag or certificate of exemption, or any plate or die used, or which may be used in the manufacture thereof, or has in his possession any bale tag which should have been destroyed as required by this Act, or who makes, uses, sells, or has in his possession any paper in imitation of the paper used in the manufacture of any such bale tag or certificate of exemption, or who reuses any bale tag required to be destroyed by this Act, or who places any cotton in any bale which has been filled and stamped, tagged, or otherwise identified under this Act, without destroying the bale tag previously affixed to such bale, or who affixes any bale tag issued under this Act to any bale of lint cotton on which any tax due is unpaid, or who makes any false statement in any application for bale tags or certificates of exemption under this Act, or who has in his possession any such bale tags or certificates of exemption obtained by him otherwise than as provided in this Act, shall on conviction be punished by a fine not exceeding $1,000, or by imprisonment for not exceeding 6 months, or both.

(e) Any person who willfully violates any regulation issued by the Secretary of Agriculture or the Secretary of Agriculture and the Secretary of the Treasury under this Act, for the violation of which a special penalty is not provided, shall, on conviction thereof, be punished by a fine not exceeding $200.

REGULATIONS BY THE SECRETARY OF AGRICULTURE

SEC. 15. (a) The Secretary of Agriculture is authorized to make such regulations as may be necessary to carry out the powers vested in him by the provisions of this Act.

(b) The Secretary of Agriculture may make regulations protecting the interests of share-croppers and tenants in the making of allotments and the issuance of tax-exemption certificates under this Act.

APPROPRIATIONS AUTHORIZED

SEC. 16. (a) There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

(b) Out of the sums available to the Secretary of Agriculture under the Agricultural Adjustment Act, such sums as may be necessary to carry out the provisions of this Act are authorized to be made available.

(c) The proceeds derived from the tax are hereby authorized to be appropriated to be made available to the Secretary of Agriculture for the purposes of carrying out the cotton program of the Agricultural Adjustment Administration, and for administrative expenses and refunds of taxes under this Act.

OFFICERS AND EMPLOYEES

SEC. 17 (*a*) The Secretary of Agriculture is authorized, in order to carry out the provisions of this Act, to appoint, without regard to the provisions of the civil service laws, such officers, agents, and employees, and to utilize such Federal officers and employees, and with the consent of the State, such State and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed, except that rates so fixed shall not exceed the rates of compensation prescribed for comparable duties by such Act, as amended.

(*b*) *Appropriations for administrative expenses under this Act are authorized to be made available to enable the Secretary of Agriculture to pay any person, who, in connection with the operation of any cotton gin, incurred additional expenses in connection with the administration of this Act with respect to cotton ginned during the crop year 1935–1936 or any subsequent crop year in which this Act is in effect, and who applies to the Secretary therefor, compensation in the amount of such additional expenses, but not in excess of the rate of 25 cents per bale of such cotton ginned by such person, provided proof satisfactory to the Secretary of Agriculture is furnished that the additional expenses for which such person makes application have not been passed on in any manner whatsoever.*

As amended by sec. 40 of Public, No. 320, 74th Congress, approved August 24, 1935.

PURCHASES AND SERVICES

SEC. 18. The administrative expenses provided for under this Act shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere for law books, periodicals, newspapers, and books of reference, for contract stenographic reporting services, and for printing and paper in addition to allotments under the existing law.

COLLECTION OF TAXES

SEC. 19. The taxes provided for by this Act shall be collected by the Commissioner of Internal Revenue under the direction of the Secretary of the Treasury. Taxes collected shall be paid into the Treasury of the United States.

REFUNDS

SEC. 20. (a) No refund of any tax, penalty, or sum of money paid shall be allowed under this Act unless claim therefor is presented within six months after the date of payment of such tax, penalty, or sum.

(b) No suit or proceeding shall be maintained in any court for the recovery of any tax under this Act alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to

have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury, established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No suit or proceeding shall be begun before the expiration of six months from the date of filing such claim, unless the Commissioner renders a decision therein within that time, nor after the expiration of two years from the date of the payment of such tax, penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall, within ninety days after any such disallowance, notify the taxpayer thereof by registered mail.

SEPARABILITY OF PROVISIONS

SEC. 21. If any provision of this Act, or the applicability thereof to any person or circumstance, is held invalid, the remainder of this Act and the applicability of such provision to other persons or circumstances shall not be affected thereby.

GEOGRAPHICAL APPLICATION OF ACT

SEC. 22. The provisions of this Act shall be applicable to the United States and its possessions, except the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam.

DEFINITIONS

SEC. 23. As used in this Act—

(a) The term "person" means an individual, a partnership, joint-stock company, a corporation, or a firm.

(b) The term "Commissioner" means the Commissioner of Internal Revenue.

(c) The term "collector" means the collector of internal revenue.

(d) The term "ginning" means the separation of lint cotton from seed cotton.

(e) The term "tax" means the tax upon the ginning of cotton imposed by this Act.

(f) The term "lint cotton" means the fiber taken from seed cotton by ginning.

(g) The term "seed cotton" means the harvested fruit of the cotton plant.

(h) The term "bale tag" means nondetachable bale tag, stamp, or other means of identifying tax-paid or exempt cotton.

(i) The term "crop year" means the period from June 1 of one year to May 31 of the succeeding year, both dates inclusive.

The term "bale", when used in sections 3, 5, 7, and 8 to describe a quantity of cotton, means five hundred pounds of lint cotton.

SEC. 24. The Secretary of Agriculture is authorized to develop new and extended uses for cotton, and for such purpose there is authorized

to be made available to the Secretary not to exceed $500,000 out of the funds available to him under section 12 of the Agricultural Adjustment Act.

SEC. 25. (a) No tax-exemption certificates shall be issued to any person not engaged in production of cotton in the crop year during which such certificates are issued.

(b) Whenever after apportionment under sections 7 and 8 any surplus number of bales remain of the amount allotted to any county under section 5 (b) such surplus bales shall be allotted, in such quantities as the Secretary of Agriculture determines, to such other counties within the State as the Secretary of Agriculture determines have an insufficient allotment. Said bales shall be apportioned, pursuant to sections 7 and 8, within the respective counties to which allotted, but in no case shall any farm receive any of such allotment so as to receive a total allotment in excess of its estimated production for the crop year in which such allotment is made.

(c) In computing the production of any State pursuant to section 5 (a) the total production of cotton for such State in the five-year period, 1928–1932, inclusive, shall be used regardless of the length of staple of such production.

Approved, April 21, 1934.

KERR TOBACCO ACT, AS AMENDED AS OF AUGUST 27, 1935.[1]

[AN ACT

To place the tobacco-growing industry on a sound financial and economic basis, to prevent unfair competition and practices in the production and marketing of tobacco entering into the channels of interstate and foreign commerce, and for other purposes.]

An Act to place the tobacco-growing industry on a sound financial and economic basis, to prevent unfair competition and practices in the production and marketing of tobacco entering into the channels of interstate and foreign commerce, to raise revenue, and for other purposes.

As amended by sec. 43 of Public, No. 320, 74th Congress, approved August 24, 1935.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DEFINITIONS

SECTION 1. As used in this Act—

(a) The term "person" includes an individual, a partnership, association, joint-stock company, corporation, or a firm, and imports the plural as well as the singular, as the case demands.

(b) The term "Commissioner" means the Commissioner of Internal Revenue.

(c) The term "collector" means the collector of internal revenue.

(d) The term "tobacco" means any type or types of tobacco specified in any agreement between the Secretary of Agriculture and a contracting producer.

(e) The term "sale" means the first bona fide sale of each pound of tobacco harvested subsequent to the enactment of this Act.

(f) The term "tax" means the tax imposed by this Act upon the sale of tobacco.

(g) The term "contracting producer" means any person who (pursuant to the provisions of the Agricultural Adjustment Act) agrees in writing with the Secretary of Agriculture to plant not more than the number of acres of tobacco, and/or to market not more than the number of pounds of tobacco, permitted in such agreement.

(h) The term "crop year" means the period May 1 to April 30.

(i) The term "Maryland tobacco" means the kind of air-cured tobacco classified as type 32 in the United States Department of

[1] Throughout the text of this document italics are used to indicate matter added by the 74th Congress by way of amendment to the Kerr Tobacco Act, Public, No. 483, 73d Congress, 48 Stat. 1275. In instances where the language was stricken or changed, heavy black brackets are used to indicate the deleted matter.

Agriculture, Bureau of Agricultural Economics, Service and Regulatory Announcements Numbered 118.

(j) The term "cigar leaf tobacco" means all leaf tobacco classified in classes 4, 5, and 6 in the United States Department of Agriculture, Bureau of Agricultural Economics, Service and Regulatory Announcements Numbered 118.

(k) The term "Virginia sun-cured tobacco" means all sun-cured tobacco classified as type 37 in the United States Department of Agriculture, Bureau of Agricultural Economics, Service and Regulatory Announcements Numbered 118.

(l) The term "Puerto Rican tobacco" means all leaf tobacco classified as type 46 in the United States Department of Agriculture, Bureau of Agricultural Economics, Service and Regulatory Announcements Numbered 118.

(m) The term "cigar-wrapper tobacco" means all leaf tobacco classified in class 6 in the United States Department of Agriculture, Bureau of Agricultural Economics, Service and Regulatory Announcements Numbered 118.

Added by sec. 44 of Public, No. 320, 74th Congress, approved August 24, 1935.

DECLARED POLICY

SEC. 2. It is hereby declared to be the policy of Congress to promote the orderly marketing of tobacco in interstate and foreign commerce, to enable producers of tobacco to stabilize their markets against undue and excessive fluctuations, to prevent unfair competition and practices in putting tobacco into the channels of interstate and foreign commerce, and to more effectively balance production and consumption of tobacco, *to raise revenue*, and to relieve the present emergency with respect to tobacco.

As amended by sec. 45 of Public, No. 320, 74th Congress, approved August 24, 1935.

IMPOSITION

SEC. 3. (a) There is hereby levied and assessed on the sale of tobacco with respect to which the tax is applicable a tax at the rate of 33⅓ per centum of the price for which such tobacco is sold: *Provided, however*, That if the Secretary of Agriculture determines and proclaims that the declared policy of this Act is best effectuated thereby, the rate of tax shall, for such period as the Secretary of Agriculture designates, be at such lower rate (not less than 25 per centum of the price for which such tobacco is sold) as he may prescribe.

(b) The tax provided for by subsection (a) of this section shall be applicable to all tobacco harvested in the crop year 1934–1935, except Maryland tobacco, Virginia sun-cured tobacco, and cigar leaf tobacco[. Thereafter whenever the Secretary of Agriculture determines that the persons who own, rent, share crop, or control three-fourths of the land customarily engaged in the production of any particular type of tobacco favor the levy of the tax thereon and that the imposition of the tax thereon is necessary for the orderly marketing of such tobacco in interstate and foreign commerce and to

effectuate the declared policy of this Act, he shall proclaim such determination at least sixty days prior to the next succeeding crop year, and the tax shall thereafter apply to tobacco of such type harvested during the crop year next following the date of such proclamation. The tax provided for by subsection (a) of this section shall not apply to any tobacco harvested after April 30, 1936.] *and to all tobacco harvested in the crop year 1935–1936, except Maryland tobacco, Puerto Rican tobacco, and cigar wrapper tobacco. Thereafter whenever the Secretary of Agriculture determines (1) that the imposition of the tax upon any particular type of tobacco is necessary for the orderly marketing of such tobacco in interstate and foreign commerce and to effectuate the declared policy of this Act, and (2) that two-thirds of the land engaged in the production of such type of tobacco during the crop year in which such determination is made is voted in favor of the levy of the tax upon the sale of such type of tobacco, he shall proclaim such determination at least sixty days prior to the next succeeding crop year, and the tax shall thereafter apply to the sale of tobacco of such type harvested during the crop year next following the date of such proclamation. All persons who have the right, during the crop year in which such determination is made, to sell or to receive a share of the proceeds derived from the sale of tobacco of any type produced by them, or produced on land owned or leased by them, shall be entitled to vote, and the proportion of all the votes cast in each county which are cast in favor of levying the tax upon the sale of such type of tobacco shall determine the proportion of the total amount of tobacco land in such county which shall be deemed to have been voted in favor of levying such tax. The tax provided for by subsection (a) of this section shall not apply to any tobacco harvested after April 30, 1939.*

As amended by sec. 46 of Public, No. 320, 74th Congress, approved August 24, 1935.

(c) The provisions of this Act shall be applicable to the United States and its possessions, except the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam.

EXEMPTIONS

SEC. 4. (a) No tax shall be imposed under this Act—

(1) Upon the tobacco harvested by any publicly owned experimental station or agricultural laboratory; or

(2) Upon tobacco harvested prior to the crop year 1934–1935.

(b) Under such rules and regulations as the Commissioner, with the approval of the Secretary of the Treasury, may prescribe, every person who, at the time the tax becomes applicable with respect to any type of tobacco, holds for sale (or use in the manufacture or production of an article intended for sale) any tobacco of such type harvested prior to the crop year 1934–1935 shall cause such tobacco to be tagged, stamped, or otherwise identified as tax-exempt tobacco.

SEC. 5. (a) (*1*) In addition to rental or benefit payments which under any provision of existing law the Secretary of Agriculture is authorized to make in connection with agreements with producers providing for reduction in the acreage or reduction in the production

for market, or both, of any basic agricultural commodity, the Secretary of Agriculture is hereby authorized and directed to issue (in each crop year wherein any type of tobacco is harvested to which the tax is applicable) to each contracting producer nontransferable tax-payment warrants (each such warrant to be expressed in pounds of tobacco of a particular type). Upon surrender of any warrant by any contracting producer to the collector, it shall be accepted by the collector and the Secretary of the Treasury in payment of the tax on any sale by such contracting producer of the type of tobacco specified in the warrant not exceeding in amount the amount of tobacco covered by such warrant. Any contracting producer shall be entitled to receive such warrants covering amounts of any type of tobacco produced by him equal (1) to the number of pounds of tobacco of such type which such contracting producer is permitted to market under any agreement between him and the Secretary of Agriculture, or (2) to the number of pounds of tobacco of such type which the Secretary of Agriculture estimates may be produced on a percentage of a base acreage, which percentage and base acreage shall be determined as provided in any agreement between the Secretary of Agriculture and such contracting producer.

(2) *The Secretary of Agriculture shall issue to any person, who, because of religious or moral scruples, is unwilling or unable to become a contracting producer, similar tax-payment warrants covering the quantity of tobacco produced by such person: Provided, That the Secretary determines that such person has not planted a greater acreage of tobacco nor sold a greater quantity of tobacco than he could have planted or sold as a contracting producer.*

As amended by sec. 47 of Public, No. 320, 74th Congress, approved August 24, 1935.

(b) [The Secretary of Agriculture may issue in any county further warrants, covering an amount of tobacco of any type not in excess of 6 per centum of the amount of tobacco of such type covered by the warrants issued to all contracting producers in such county, to persons engaged in the production of tobacco of such type in such county as to whom the Secretary determines that no equitable allotment of tobacco acreage or production is possible under tobacco-reduction contracts offered pursuant to the Agricultural Adjustment Act: *Provided*, That warrants covering two-thirds of the amount of tobacco allotted under the subsection in any county shall be issued to growers whose allotments are 1,500 pounds or less.]

There shall be available for issuance by the Secretary of Agriculture further warrants, covering an amount of tobacco of any type equal to 3 per centum of the amount of tobacco of such type covered by the warrants issuable or issued to all contracting producers under the provisions of subsection (a) of this section, to persons engaged in the production of tobacco of such type who do not enter into such contracts and as to whom the Secretary determines that no equitable allotment of tobacco acreage or production is possible under such tobacco contracts. Such warrants shall be issued, upon application therefor, upon such basis or classification as the Secretary deems will effectuate the declared policy of this Act and will be fair and just, and as will apply to all persons eligible to receive warrants under this subsection uniformly on the basis or classification adopted: Pro-

vided, That warrants covering two-thirds of the amount of any type of tobacco to cover which warrants are available under this subsection shall be issued, upon application therefor, only to persons who receive warrants covering one thousand five hundred pounds or less of any type of tobacco. Warrants issued under this subsection shall be accepted by the collector and the Secretary of the Treasury, upon surrender thereof by the person to whom issued, in payment of the tax on any sale by such person of the type of tobacco specified in the warrant not exceeding in amount the amount of tobacco covered by such warrant.

As amended by sec. 48 of Public, No. 320, 74th Congress, approved August 24, 1935.

(c) Upon application therefor, the warrants provided for by subsections (a) and (b) of this section may be issued by the Secretary of Agriculture, or his duly authorized agent, in such manner, at such time or times, at such place or places, and in such form as the Secretary of Agriculture may prescribe.

(d) [Any tax-payment warrant erroneously issued shall be void upon demand in writing for its return made by the Secretary of Agriculture to the person to whom such warrant was issued.]

If any tax-payment warrant is erroneously issued to any person, or if the Secretary of Agriculture determines pursuant to this subsection that any person to whom any tax-payment warrant is issued has failed to comply in any crop year with any provision of any agreement entered into by such person pursuant to the Agricultural Adjustment Act or has failed to comply with any rule or regulation issued by the Secretary of Agriculture pursuant to this Act or the Agricultural Adjustment Act, any warrant issued during such crop year to such person shall be void upon demand in writing for the return of such warrant made by the Secretary of Agriculture to the person to whom such warrant was issued. If any tax-payment warrant which has been accepted in payment of the tax imposed by this Act upon the sale of tobacco becomes void pursuant to this subsection either before or after such acceptance, the person to whom such warrant was issued shall, notwithstanding such acceptance of such warrant, be liable for the full amount of the tax upon such sale.

As amended by sec. 49 of Public, No. 320, 74th Congress, approved August 24, 1935.

(e) The right to a tax-payment warrant under this section shall be evidenced in such manner as the Secretary of Agriculture may by regulations prescribe.

(f) The Secretary of Agriculture may make regulations protecting the interests of share-croppers and tenants in the issuance of tax-payment warrants under this Act.

COLLECTION OF TAXES

SEC. 6. (a) The taxes provided for in this Act shall be paid by the seller and collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury. Such taxes shall be paid into the Treasury of the United States.

(b) All provisions of law, including penalties (except section 1121 of the Revenue Act of 1926), applicable with respect to the taxes

imposed by section 600 of the Revenue Act of 1926, and the provisions of section 626 of the Revenue Act of 1932, shall, insofar as applicable and not inconsistent with the provisions of this Act, be applicable in regard to all taxes imposed by this Act.

RULES AND REGULATIONS

SEC. 7. (a) The Commissioner, with the approval of the Secretary of the Treasury, shall prescribe such rules and regulations as he may deem needful for the collection of the tax.

(b) The Secretary of Agriculture is authorized to make such rules and regulations as may be necessary to carry out the powers vested in him by the provisions of this Act.

INFORMATION RETURNS

SEC. 8. (a) All producers, warehousemen, processors of tobacco, and common carriers, having information with respect to tobacco produced or sold, may be required to make a return in regard thereto, setting forth the amount of tobacco produced, sold, or delivered, the name and address of the person who produced, sold, or delivered said tobacco, or to whom said tobacco was sold or delivered, the price paid on such sale, and any other and further information which the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury shall by regulations prescribe as necessary for the collection of the tax. Any person required to make such return shall render a true and accurate return to the Commissioner of Internal Revenue.

[(b) Any person willfully failing or refusing to file such a return, or filing a willfully false return, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000.]

(b) All persons, in whatever capacity acting, including producers, warehousemen, processors of tobacco, and common carriers, having information with respect to tobacco produced or sold, may be required to make a return in regard thereto, setting forth the amount of tobacco produced, sold, or delivered, the name and address of the person who produced, sold, or delivered said tobacco, or to whom said tobacco was sold or delivered, the price paid on such sale, and any other and further information which the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury and the Secretary of Agriculture, shall by regulations prescribe as necessary for the proper administration and collection of the tax. Any person required to make any such return shall render a true and accurate return to the Commissioner of Internal Revenue.

(c) Any person willfully failing or refusing to file any return required to be filed under this section, or filing willfully any false return, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000.

As amended by sec. 50 of Public, No. 320, 74th Congress, approved August 24, 1935.

GENERAL AND PENAL PROVISIONS

SEC. 9. (a) No tax-payment warrant issued in accordance with this Act may be transferred or assigned either in whole or in part, except by the executor or other legal representative of a deceased producer to whom a tax-payment warrant has been issued under this Act. Any person who acquires a tax-payment warrant from another person or who transfers a tax-payment warrant to another person in violation of the provisions of this Act, or who violates any provision of this Act, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than $1,000 or sentenced to not more than six months' imprisonment, or both.

(b) Any person who, with intent to defraud, forges, makes, or counterfeits any tax-payment warrant or any stamp, tag, or other means of identification made or used under this Act, or makes any false entry upon such warrant or any false statement in any application for the issuance of such warrant, or who uses, sells, lends, or has in his possession any such altered, forged, or counterfeited warrant, stamp, tag, or other means of identification, or who makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such warrants, stamps, tags, or other means of identification, or who makes any false statement in any application with respect to the levying and collection of the tax, shall, upon conviction thereof, be punished by a fine not exceeding $5,000 or by imprisonment not exceeding five years, or both.

(c) Any person who is authorized in writing by the Secretary of Agriculture to act as his agent in the administration of this Act shall, while he is acting as such agent, have the power to administer oaths in connection with the execution of forms required by regulations issued pursuant to sections 7 and 8 of this Act, but no fee or compensation shall be charged or received by any such agent for administering such an oath.

Added by sec. 51 of Public, No. 320, 74th Congress, approved August 24, 1935.

APPROPRIATIONS AND ADMINISTRATIVE EXPENSES

SEC. 10. (a) [The proceeds derived from the tax are hereby appropriated to be available to the Secretary of Agriculture for administrative expenses and refunds of taxes and other payments under this Act.] *The proceeds heretofore and hereafter derived from the tax are hereby appropriated to be available to the Secretary of Agriculture for rental and benefit payments under the Agricultural Adjustment Act to contracting producers, for administrative expenses, refunds of taxes, redemption of tax-payment warrants heretofore or hereafter received by contracting producers subsequent to the sale of the tobacco covered by said warrants and subsequent to payment of the tax imposed upon such sale by section 3 of this Act, and other payments under this Act.* The Secretary of Agriculture and the Secretary of the Treasury shall estimate from time to time the amount of the tax which will be collected during a period following any such estimate not in excess of four months, and the Secretary

of the Treasury shall, out of any money in the Treasury not otherwise appropriated, advance to the Secretary of Agriculture the amounts so estimated. The amount of any such advance shall be deducted from such tax proceeds as shall subsequently become available under this subsection.

As amended by sec. 52 of Public, No. 320, 74th Congress, approved August 24, 1935.

(b) Out of the sums available to the Secretary of Agriculture under the Agricultural Adjustment Act, as amended, such sums as may be necessary for administrative expenses, refunds of taxes, and other payments under this Act are hereby made available.

(c) The Secretary of Agriculture is authorized in order to carry out the provisions of this Act to appoint, without regard to the provisions of the civil-service laws, such officers, agents, and employees, and to utilize such Federal officers and employees and, with the consent of the State, such State and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers, agents, and employees so appointed.

(d) The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books, periodicals, newspapers, and books of reference, for contract stenographic reporting services, and for printing and paper in addition to allotments under the existing law.

(e) The Secretary of Agriculture shall transfer to the Treasury Department, and is authorized to transfer to other agencies, out of funds available for administrative expenses under this Act, such sums as are required to pay administrative expenses incurred and refunds made by such Department or agencies in the administration of this Act.

REFUNDS

SEC. 11. (a) No refund of any tax, penalty, or interest paid under this Act shall be allowed unless claim therefor is presented within [six months] *one year* after the date of payment of such tax, penalty, or interest.

As amended by sec. 53 of Public, No. 320, 74th Congress, approved August 24, 1935.

(b) No suit or proceeding shall be maintained in any court for the recovery of any tax under this Act alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury, under this Act; but such suit or proceeding may be maintained whether or not such tax, penalty, or interest has been paid under protest or duress. No suit or proceeding shall be begun before the expiration of six months

from the date of filing such claim, unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of the payment of such tax, penalty, or interest, unless such suit or proceeding is begun within two years after the disallowance of the claim or of the part of such claim to which such suit or proceeding relates. The Commissioner shall, within ninety days after any such disallowance, notify the taxpayer thereof by mail.

SEPARABILITY OF PROVISIONS

SEC. 12. If any provision of this Act, or the applicability thereof to any person or circumstance, is held invalid the remainder of this Act and the applicability thereof and of such provision to other persons or circumstances shall not be affected thereby.

TERMINATION

SEC. 13. The tax shall terminate with respect to any type of tobacco at the end of the crop year current at the time the Secretary of Agriculture proclaims that rental and/or benefit payments under the Agricultural Adjustment Act are to be discontinued with respect to such type of tobacco or whenever the President finds and proclaims that the national economic emergency with respect to such type of tobacco has ended, whichever is the earlier.

SEC. 14. [The Secretary of Agriculture is directed not to refuse on the ground of lateness any offer by a tobacco producer to become a contracting producer, if such offer is filed with the Secretary of Agriculture within thirty days after the date of the enactment of this Act.]

The Secretary of Agriculture is directed not to refuse on the ground of lateness any offer by a tobacco producer to become a contracting producer, if such offer is filed with the Secretary of Agriculture within thirty days after the date of the proclamation by the Secretary of Agriculture, pursuant to subsection (b) of section 3 of this Act.

As amended by sec. 54 of Public, No. 320, 74th Congress, approved August 24, 1935.

SEC. 15. Having due regard to the welfare of domestic producers of tobacco and to the protection of domestic consumers thereof and to a just relation between the price received by such domestic producers and the price paid by such domestic consumers and in other respects to effectuate the declared policy of this Act, the Secretary of Agriculture may from time to time, by orders or regulations:

(A) For each crop year in which any type of tobacco is harvested to which the tax is applicable, or for any part of such crop year, establish quotas for the importation into continental United States of cigar-leaf types of tobacco, and during such crop year readjust any such quotas. Such quotas shall be based on average quantities of such tobacco imported into continental United States during the crop years 1932–1933 and 1933–1934, except that in the case of tobacco imported from the Republic of Cuba, such quotas shall be based on average quantities of tobacco so imported during the crop years 1928–1933.

(B) Allot the quotas provided for by subsection (A) to the importers of such tobacco in the United States in such manner as he may deem fair and equitable, having due regard to the respective amounts of tobacco imported during the crop years 1932–1933 and 1933–1934 by such persons.

SEC. 16. After importation quotas therefor have been established, all cigar-leaf tobacco of any type imported into continental United States in excess of the quota for such type shall be subject to an import tax. The rate of the import tax, expressed in cents per pound, shall be determined by the Secretary of Agriculture as hereinafter provided. On May 1 of each crop year for which quotas are to be established pursuant to section 15, the Secretary of Agriculture shall determine (from available statistics of the Department of Agriculture) the average sales price per pound, during the preceding twelve months, of all domestic cigar-leaf tobacco the sale of which is to be taxed during the ensuing crop year under this Act. This average sales price, times the average per centum tax rate then current under this Act on the sale of such domestic cigar-leaf tobacco, shall be the rate per pound of the import tax and shall be proclaimed by the Secretary of Agriculture. The import tax shall be paid prior to the release of the tobacco subject thereto from customs custody or control.

As used in this and the preceding section "cigar-leaf types of tobacco" shall include cigars, which for the purposes of the quotas, allotments, and import tax provided for by said sections shall be translated into terms of raw cigar-leaf tobacco of the respective types from which such cigars are produced, pursuant to conversion factors established and proclaimed by the Secretary of Agriculture.

Approved, June 28, 1934.

POTATO ACT OF 1935

[BEING TITLE II OF "AN ACT TO AMEND THE AGRICULTURAL ADJUSTMENT ACT, AND FOR OTHER PURPOSES", APPROVED AUGUST 24, 1935, PUBLIC, NO. 320, 74TH CONGRESS]

TITLE II

DEFINITIONS

SEC. 201. When used in this title, unless the context otherwise requires—

(a) The term "person" includes an individual, a corporation, a partnership, a business trust, a joint-stock company, an association, a syndicate, group, pool, joint venture, or any other unincorporated organization or group.

(b) The term "Commissioner" means the Commissioner of Internal Revenue.

(c) The term "collector" means a collector of internal revenue.

(d) The term "sale" includes any agreement or delivery whereby the seller transfers the property in, or right to consume, potatoes to another for a consideration, and any sum of money, services, property, or anything of value whatsoever, may constitute consideration for such transfer, but does not include the transfer of the right to consume potatoes to a member of the household of ap roducer of such potatoes or a transfer for consumption by the household of a person employed in the farming operations of the producer of such potatoes.

(e) The term "allotment year" means the period commencing December 1 and ending November 30: *Provided*, That the first allotment year shall commence December 1, 1935, and shall end November 30, 1936.

(f) The term "change in the form of potatoes" means an intentionally effected change in the form of potatoes in preparation for the sale of such potatoes, or any product thereof, as such change is defined by rules and regulations prescribed by the Commissioner, with the approval of the Secretary of the Treasury.

(g) The term "tax stamp" means an appropriate stamp or other means of identifying potatoes with respect to which a tax levied by this title has been paid.

(h) The term "tax-exemption stamp" means an appropriate stamp or other means of identifying potatoes with respect to which an exemption from a tax levied by this title has been established.

(i) The term "potatoes" means all varieties of potatoes included in the species Solanum tuberosum.

(j) The term "producer" means a person who has the right to sell, or to receive a share of the proceeds derived from the sale of, potatoes cultivated by him, or on land owned or leased by him.

(k) The term "continental United States" means the several States of the United States and the District of Columbia and does not include any Territory or possession of the United States.

(l) The term "operator" means any person operating his own farm, any tenant operating a farm rented for cash or for a fixed-

commodity payment, any crop-share tenant, and any crop-share landlord.

(m) The term "farm" means all the land operated by the producer as a single operating unit with work stock, farm machinery, and labor substantially separate from that of any other tract of land.

IMPOSITION OF THE TAX

SEC. 202. (a) There is hereby levied and assessed upon each first sale of potatoes harvested on or after December 1, 1935, in the continental United States a tax, to be paid by the seller, at the rate of three-fourths of 1 cent per pound: *Provided*, That when there is a change in the form of potatoes harvested on or after December 1, 1935, in the continental United States prior to the first sale thereof, a tax at the rate of three-fourths of 1 cent per pound, to be paid by the owner at the time such change is effected, is hereby levied and assessed upon the effecting of such change, and no tax shall be levied upon the first sale of such potatoes or any product or products thereof.

(b) If the Secretary of Agriculture finds at any time that the total apportionments to producers in any potato-producing region or regions (as established and defined pursuant to subsection (c) of section 209 of this title) are in excess of the probable supply of potatoes in the continental United States during the marketing periods for such region or regions, he shall proclaim such determination, and the provisions of this title shall not be operative during such marketing periods.

(c) At least thirty days prior to the beginning of each allotment year after the first allotment year, the Secretary of Agriculture shall conduct a referendum which will afford to producers of potatoes a reasonable opportunity to vote in favor of or in opposition to continuing in effect with respect to potatoes produced during the succeeding allotment year the taxes levied by subsection (a) of this section. Each producer who is entitled to an allotment for the last allotment year for which such apportionments were made shall be entitled to one vote; and such taxes shall not be in effect and the provisions of this title shall not be operative with respect to potatoes produced in such succeeding year unless the majority of the votes cast in such referendum are cast in favor of continuing such taxes in effect.

(d) If the Secretary of Agriculture determines and proclaims that the taxes levied by subsection (a) of this section will at the rate therein specified for such taxes, (1) tend to adversely affect the orderly marketing of potatoes, or (2) tend to depress the farm price of potatoes, or (3) tend to cause to producers of potatoes disadvantages in competition by reason of an excessive shift in consumption from potatoes to some other commodity or commodities, then the rate of such taxes shall for such period as the Secretary of Agriculture designates, be at the highest rate which is lower than three-fourths of 1 cent (not less than one-half of 1 cent per pound) as he finds and proclaims will not adversely affect such orderly marketing, or cause such depression of the farm price, or cause such disadvantages in competition.

(e) The taxes levied by subsection (a) of this section shall be represented by tax stamps, and the proceeds of taxes levied under this title shall be paid into the Treasury of the United States as internal revenue collections.

(f) The Commissioner shall cause to be prepared, for the payment of such taxes, tax stamps of suitable denominations and shall furnish same to the collectors of internal revenue. The Commissioner shall also furnish to the Postmaster General without prepayment a suitable quantity of such stamps to be distributed to, and kept on sale by, the various postmasters in the United States. The Postmaster General may require each such postmaster to give additional or increased bond as postmaster for the value of the stamps so furnished, and each such postmaster shall deposit the receipts from the sale of such stamps to the credit of, and render accounts to, the Postmaster General at such times and in such form as he may by regulations prescribe. The Postmaster General shall at least once monthly transfer all collections from this source to the Treasury as internal revenue collections.

ALLOTMENTS

SEC. 203. The Secretary of Agriculture shall investigate probable production and market conditions for each allotment year and shall determine from available statistics of the Department of Agriculture and proclaim, at least thirty days prior to the beginning of each allotment year, the quantity of potatoes which, if produced during such year and sold during or after such year, will, in his opinion, tend to establish and maintain such balance between the production, sale, and consumption of potatoes and the marketing conditions therefor as will, in his opinion, tend to establish prices to potato producers at a level that would give potatoes a purchasing power with respect to articles that farmers buy equivalent to the purchasing power of potatoes in the period August 1919–July 1929 without reducing the total net income of potato producers from potatoes below the largest probable income of potato producers from potatoes produced during such allotment year, and without tending to cause to producers of potatoes disadvantages in competition by reason of an excessive shift in consumption from potatoes to some other commodity or commodities; and the quantity so proclaimed shall, for each allotment year, be apportioned by the Secretary of Agriculture as hereinafter provided.

SEC. 204. When a quantity is determined in accordance with section 203 of this title, the Secretary of Agriculture shall apportion such quantity among the several States. The apportionment to each State shall be determined on the basis of the ratio that the annual average acreage of the four years in which the highest potato acreage was harvested in such State in the years 1927–1934, inclusive, multiplied by the average yield per acre for the four years that the yield of potatoes per acre for such State was highest in the years 1927–1934, inclusive, multiplied by the average annual percentage of the crop produced in such State during the years 1929–1934, inclusive, which was sold, bears to the sum of the products of such average acreages, such average yields, and such percentages of sales for all States:

Provided, That if the Secretary of Agriculture finds that the application of the foregoing formula alone would, because of differences in production practices and marketing practices among the several States, result in an inequitable and unfair apportionment to any State or States, not in excess of 2 per centum of the quantity of potatoes determined in accordance with section 203 of this title may be deducted from such quantity and may be used by the Secretary of Agriculture to adjust on the basis of equity and fairness the apportionments made or to be made to any State or States.

SEC. 204a. The quantity determined and proclaimed by the Secretary of Agriculture pursuant to Section 203, and the quantity apportioned to each State pursuant to Section 204, may at such intervals as the Secretary of Agriculture finds necessary to effectuate the declared policy and purposes of this Act be adjusted by him: *Provided*, That the quantity so determined and proclaimed shall not be increased or decreased by more than 5 per cent.

SEC. 205. Ninety-five per centum of the quantity of potatoes apportioned to any State pursuant to section 204 of this title shall be apportioned by the Secretary of Agriculture to farms on which potatoes have been grown within such State during any one or more years within the period 1932–1934, inclusive. Such apportionment to any farm shall be made upon application therefor and may, in order to secure equitable apportionments to producers, be made by the Secretary based upon either—

(1) A percentage of the average sales of potatoes produced on such farm for a representative base period, prescribed by the Secretary, of any two or more years during the years 1932–1934, inclusive, providing the operators of such farm for the allotment year for which the apportionment is made produced potatoes on such farm during at least one of the base-period years. The representative base period prescribed by the Secretary and the percentage applied to the average sales of potatoes produced during such period in establishing apportionments for each farm under this paragraph shall, so far as practicable, be uniform for farm similarly situated upon the basis or classification prescribed by the Secretary of Agriculture, but in the case of any farm for which such average sales are 300 pounds or less, such average sales shall be exempt from any percentage reduction thereof and such farm shall receive an apportionment equal to such average sales; or

(2) Such basis as the Secretary of Agriculture deems fair and just and will apply to all farms to which an apportionment is made under this paragraph 2 uniformly on the basis or classification adopted. In making an apportionment to a farm under this paragraph, due consideration shall be given to the quantity of potatoes produced and sold in the past by the operators who will operate such farm for the allotment year for which the apportionment is made, the quantity of potatoes produced on such farm and sold in the past, and the acreage of the farm available for the production of potatoes and which the operators are currently equipped to devote to the production of potatoes.

SEC. 206. Not in excess of 5 per centum of the quantity of potatoes apportioned to any State pursuant to section 204 of this title shall, upon application therefor, be available for apportionment by the

Secretary of Agriculture to farms operated by persons engaged or evidencing a desire to engage in the production and sale of potatoes in such State and which farms are ineligible to receive an apportionment under section 205 or in respect to which the Secretary of Agriculture determines that the apportionments made pursuant to section 205 are inequitable: *Provided*, That apportionments under this section shall be made upon such basis as the Secretary of Agriculture deems fair and just and which will, so far as practicable, apply to all such farms uniformly upon the basis or classification prescribed by the Secretary. Any quantity not apportioned under this section shall be available for apportionment under section 205 of this title.

SEC. 207. If an apportionment is made to a farm under section 206 of this title for any allotment year, for each succeeding allotment year that the operation of such farm is continued by the operators who operated it during the allotment year for which such apportionment was made, the apportionment to such farm shall be made upon the basis provided in section 206 of this title but shall be made from the quantity available for apportionment under section 205 of this title.

SEC. 208. For the purposes of the apportionments to be made pursuant to sections 204, 205, 206, and 207 of this title, the District of Columbia shall be considered as a part of the State of Maryland.

SEC. 209. (a) The Secretary of Agriculture, or any agent or agency designated for such purpose by the Secretary of Agriculture, shall, upon application therefor, issue for each farm tax-exemption stamps for an amount of potatoes equal to the apportionment made to such farm pursuant to sections 205, 206, and 207 of this title: *Provided*, That under such regulations as the Secretary of Agriculture shall prescribe he shall refuse to issue such tax-exemption stamps to any applicant in any allotment year in which such applicant is not a bona fide producer of potatoes. Each such tax-exemption stamp, during the period of its validity as determined pursuant to subsection (c) of this section, shall establish an exemption from the taxes imposed by subsection (a) of section 202 of this title for the amount of potatoes stated on the face of each such stamp.

(b) The right to tax-exemption stamps shall be evidenced in such manner as the Secretary of Agriculture may by regulations prescribe, and such tax-exemption stamps shall be issued in such form or forms, and under such terms and conditions as may be prescribed jointly by the Secretary of Agriculture and the Secretary of the Treasury.

(c) The Secretary of Agriculture shall establish and define potato-producing regions for the continental United States upon the basis of the marketing periods for potatoes produced in such regions during an allotment year, and shall from time to time by regulation and upon the basis of such marketing periods for each such region, determine and fix the period during which tax-exemption stamps issued, or pursuant to subsection (g) of this section transferred, to producers in such regions for any allotment year shall be valid, provided that all tax-exemption stamps shall be valid for a period of at least the allotment year for which they are issued.

(d) If any tax-exemption stamp is erroneously issued, the person to whom such stamp is so issued shall, upon demand by the Secre-

tary of Agriculture in writing and mailed to the last-known address of such person, be obligated to return such stamp or pay to the Secretary a sum equal to the amount of the taxes imposed by subsection (a) of section 202 of this title upon the amount of potatoes covered by such stamp, at the rate in effect at the time such stamp was issued.

(e) Any sale, assignment, pledge, or transfer, and any agreement or power of attorney to sell, assign, apply, pledge, or transfer made or entered into by any person of his right to or claim for tax-exemption stamps or any part thereof not accompanied by actual delivery of such stamps shall, for all purposes, be null and void; except agreements between landlords and share-tenants or share-croppers which, in accordance with such regulations as the Secretary of Agriculture shall prescribe, provide for a division of the tax-exemption stamps received or to be received by any such landlord, any such share-tenant or any such share-cropper, or any or all of them, in accordance with their respective shares in the potatoes or the proceeds thereof to be produced by them.

(f) Where a farm is operated by share-tenants, or with the aid of share-croppers, tax-exemption stamps issued for an apportionment made to such farm shall be used by the landlord, the share-tenants, and/or the share-croppers in accordance with their respective shares in the potatoes produced on such farm, during the allotment year for which such apportionment is made, or the proceeds of such potatoes, and the Secretary of Agriculture shall issue regulations protecting the interests of share-croppers and tenants in the issuance and use of such tax-exemption stamps.

(g) If accompanied by delivery thereof, tax-exemption stamps may be transferred or assigned in such manner and upon such terms and conditions, including conditions governing the consideration which must be given therefor, as the Secretary of Agriculture may determine are reasonably necessary to prevent (1) transfers and assignments which would tend to depress the market price for potatoes produced in any potato-producing area, (2) speculation in tax-exemption stamps, or (3) fraud or coercion in the transfer of such stamps, or which the Secretary of Agriculture finds to be necessary or desirable to facilitate the identification of tax-paid or tax-exempt potatoes or which the Secretary of Agriculture finds to be necessary or desirable to protect the interests of tenants and share-croppers in the issuance and use of tax-exemption stamps.

SEC. 210. Tax-exemption stamps issued to a person, and a person's right to and claim for, tax-exemption stamps shall be exempt from the claims of the creditors of such person and from any and all process for the enforcement of such claims. The Secretary of Agriculture shall by regulation provide for the issuance to, and/or use by, the person who by devise, bequest, or descent becomes the owner of potatoes planted by a person dying during an allotment year, of the tax-exemption stamps which have been, or would have been, issued to such deceased person for such allotment year.

PACKAGING

SEC. 211. (a) To facilitate the collection of the tax upon the first sale of potatoes imposed by subsection (a) of section 202 of this title, all potatoes harvested on and after December 1, 1935, and sold in the

continental United States, during any period such tax is in effect, shall, in accordance with such rules and regulations as the Commissioner with the approval of the Secretary of the Treasury shall prescribe, be packed in closed and marked containers to which shall be attached or affixed tax stamps or tax-exemption stamps equal in face value to the amount of tax per pound in effect on the potatoes contained therein: *Provided*, That, subject to such regulations as the Commissioner with the approval of the Secretary of the Treasury may prescribe, packaging may be postponed beyond the time of the first sale of potatoes which are to be stored in bulk, or which are to be graded, at such places as may be designated by regulations prescribed by the Commissioner with the approval of the Secretary of the Treasury. The time and method of such packaging and the time and method of attaching or affixing such stamps and the time and circumstances under which packages may be broken shall be established in accordance with such regulations as the Commissioner, with the approval of the Secretary of the Treasury, may prescribe as desirable or necessary to facilitate the collection of the taxes levied by this title. In prescribing and approving rules and regulations for the packaging of potatoes and the attaching or affixing of stamps, the Commissioner and the Secretary of the Treasury shall give due weight to the customs of the industry.

(b) To facilitate the collection of the tax upon a change in the form of potatoes imposed by subsection (a) of section 202 of this title, the Commissioner, with the approval of the Secretary of the Treasury, is authorized by regulation to prescribe appropriate means of identifying potatoes, the change of form of which is subject to such tax, and for the identification of the products of such potatoes.

RULES AND REGULATIONS

SEC. 212. The Commissioner, with the approval of the Secretary of the Treasury, shall prescribe and publish such rules and regulations as he may deem needful in administering provisions of this title relating to the revenue including rules and regulations for the issue, sale, custody, production, cancelation, destruction, and disposition of tax stamps and the cancelation and destruction of tax-exemption stamps, and the substitution or replacement of tax stamps in cases of loss, destruction, or defacement thereof.

SEC. 213. The Secretary of Agriculture is authorized to make such rules and regulations as may be necessary to carry out the powers vested in him by the provisions of this title.

SEC. 214. (a) All producers, warehousemen, processors, carriers, retailers, factors, handlers, and any other person who the Commissioner has reason to believe to have information with respect to potatoes produced, or sold, or subject to a tax on a change in the form of potatoes, may be required, under regulations prescribed jointly by the Secretary of the Treasury and the Secretary of Agriculture, to make such returns, render such statements, give such information, and keep such records as they may deem necessary for the proper administration of this title.

(b) Any person willfully failing or refusing to file such a return, render such statement, give such information, or keep such records, or filing a willfully false return, or rendering or giving willfully false statements or information or willfully keeping false records,

shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than $1,000 or by imprisonment not exceeding one year, or both.

REFUNDS

SEC. 215. (a) No refund of any tax, penalty, interest, or sum of money paid shall be allowed under this title unless claim therefor is presented within one year after the date of payment of such tax, penalty, interest, or sum.

(b) No suit or proceeding shall be maintained in any court for the recovery of any tax under this title alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner illegally or wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner according to the provisions of law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof. No suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of payment of such tax, penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall, within ninety days after such disallowance, notify the taxpayer thereof by registered mail.

(c) The amount of the taxes imposed by subsection (a) of section 202, paid by a person, which taxes would not have been paid had the tax-exemption stamps to which such person was entitled been delivered to such person prior to the payment of such taxes, shall be refunded to such person.

APPROPRIATION

SEC. 216. (a) The proceeds derived from the taxes imposed by this title are hereby authorized to be appropriated to be available to the Secretary of Agriculture for administrative expenses, for all purposes of the Agricultural Adjustment Act, as amended, for refunds of taxes and for other payments under this title. The Secretary of Agriculture and the Secretary of the Treasury shall estimate from time to time the amount of taxes which will be collected under this title during a period following any such estimate not in excess of four months, and the Secretary of the Treasury shall, out of any money in the Treasury not otherwise appropriated, advance to the Secretary of Agriculture the amounts so estimated. The amount of any such advance shall be deducted from such tax proceeds as shall subsequently become available under this subsection: *Provided*, That all taxes imposed by section 230 of this title, collected upon potatoes coming from the possessions or territories of the United States, shall not be covered into the general fund of the Treasury of the United States but shall be held as a separate fund and paid into the treasuries of the said possessions and territories, respectively, to be used and expended by the governments thereof for the benefit of agriculture.

(b) The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books, periodicals, newspapers, and books of references, for contract stenographic reporting services, for the purchase or hire of vehicles, including motor vehicles, and for printing and paper in addition to allotments under the existing law.

(c) The Secretary of Agriculture may advance or transfer to the Treasury Department, to the Post Office Department, and to any other department or agency, out of funds available for administrative expenses under this title, such sums as are required to pay administrative expenses of, and refunds made by, such departments or agencies in the administration of this title.

(d) There is hereby authorized to be appropriated to be available to the Secretary of Agriculture such sums as may be necessary for administrative expenses, for refunds of taxes, and for other advances or payments under this title.

GENERAL AND PENAL PROVISIONS

SEC. 217. If at any time the Secretary of Agriculture finds that any product or products manufactured from potatoes is of such low value, considering the quantity of potatoes used for its manufacture, that the imposition of the taxes imposed by subsection (a) of section 202 of this title would prevent wholly or in large part the use of potatoes in the manufacture of such product or products or that potatoes used for the feeding of livestock are of such low value that the imposition of such taxes would prevent wholly or in large part the sale of potatoes for any such use, the Secretary of Agriculture shall proclaim such finding and thereafter in accordance with regulations prescribed jointly by the Secretary of Agriculture and the Secretary of the Treasury, the sale, or change in form, of potatoes for such use or uses by the purchaser thereof shall be exempt from the provisions of subsection (a) of section 211, and from the taxes imposed by subsection (a) of section 202 of this title until such time as the Secretary of Agriculture, after further investigation and due notice and opportunity for hearing to the interested parties, revokes such proclamation: *Provided*, That the right to any such exemption shall be evidenced in such manner as joint regulations of the Secretary of Agriculture and the Secretary of the Treasury shall prescribe. If such puchaser uses any potatoes sold to him free of tax under this section or uses any product of such potatoes, for other than an exempt use as above specified, then he shall be liable for a tax in the same manner as if such potatoes were sold by him at a first sale.

SEC. 218. The Secretary of Agriculture is authorized, in order to carry out the provisions of this title, to appoint, without regard to the provisions of the civil-service law, such officers, agents, and employees and to utilize such Federal officers and employees and, with the consent of the State, such State and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers, agents, and employees so appointed.

SEC. 219. (a) For the more effective administration of the functions vested in him by this title, the Secretary of Agriculture is

authorized to utilize committees and associations heretofore or hereafter established pursuant to subsection (b) of section 10 of the Agricultural Adjustment Act, as amended, and to establish regional, State, and local committees and associations of producers of potatoes.

(b) The Secretary of Agriculture, out of any funds appropriated for administrative expenses under this title, is authorized to advance funds to the proper fiscal officer of associations established or utilized pursuant to subsection (a) of section 219 of this title, for expenses incurred or to be incurred in the administration of this title, with the approval of the Secretary of Agriculture by such associations. Payment of such expenses of such associations shall be made upon such evidence and in such manner and at such time or times as the Secretary of Agriculture may direct, and the accounting therefor by the associations shall be solely administrative and to the Secretary of Agriculture only.

SEC. 220. Any person who knowingly sells, or offers for sale, or knowingly offers to buy, or buys, potatoes not packaged as required by this title, or any person who knowingly sells, or offers for sale, or who knowingly offers to buy, or buys, potatoes to the packages of which are not affixed or attached tax-exemption stamps or tax stamps as required by this title shall, upon conviction thereof, be fined not more than $1,000. Any person convicted of a second offense under the provisions of this title may, in addition to such fine, be imprisoned for not more than one year.

SEC. 221. Any person who, in violation of the regulations made by the Secretary of Agriculture, speculates in tax-exemption stamps, and any person securing tax-exemption stamps from another person by fraud or coercion, shall, upon conviction thereof, be fined not more than $1,000 or sentenced to not more than one year's imprisonment, or both.

SEC. 222. Whenever any potato container, to which are affixed tax stamps or tax-exemption stamps, is emptied, it shall be the duty of the person in whose hands the same is to destroy utterly the stamps affixed thereto. Any revenue officer may destroy the tax stamps or tax-exemption stamps affixed to any emptied potato package.

SEC. 223. Any person who willfully violates any provision of this title, or who willfully fails to pay, when due, any tax imposed under this title, or who, with intent to defraud, falsely makes, forges, orders, or counterfeits any tax stamps or tax-exemption stamps made or used under this title or who uses, sells, or has in his possession any such forged, ordered, or counterfeited tax stamps or tax-exemption stamps or any plate or die used, or which may be used in the manufacture thereof, or has in his possession any tax stamp or tax-exemption stamp which should have been destroyed as required by this title, or who makes, uses, sells, or has in his possession, any paper in imitation of the paper or other substance used in the manufacture of any such tax stamp or tax-exemption stamp, or who reuses any tax stamp or tax-exemption stamp required to be destroyed by this title, or who places any potatoes in any package which has been theretofore filled or stamped or otherwise identified under this title without destroying the tax stamps and tax-exemption stamps previously affixed to such package, or who gives away or accepts from another or who sells or buys any emptied package which had been previously filled and stamped or otherwise identified under this title without

destroying the tax stamps and tax-exemption stamps previously affixed or attached to such package, or who makes any false statement in any application for tax-exemption stamps under this title, or who has in his possession any tax-exemption stamps or tax stamps, obtained by him otherwise than as provided in this title, shall, upon conviction, be punished by a fine not exceeding $1,000 or by imprisonment for not exceeding six months, or both.

SEC. 224. Any person who willfully violates any regulation issued or approved pursuant to this title, for the violation of which a special penalty is not provided by law, shall, upon conviction thereof, be punished by a fine not exceeding $200.

SEC. 225. All provisions of law, including penalties, applicable with respect to the taxes imposed by sections 600 and 800 of the Revenue Act of 1926, except section 1121 of the Revenue Act of 1926, and except section 614 of the Revenue Act of 1932, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable with respect to all taxes imposed by this title.

SEC. 226. In order to facilitate the making of apportionments and the collection of the taxes imposed by this title, every producer who sells potatoes during any allotment year, or who affects a change in the form of potatoes, shall keep such books and records as the Commissioner, with the joint approval of the Secretary of the Treasury and the Secretary of Agriculture, shall by regulations require and such books and records shall be open to inspection by any authorized agent of the Secretary of Agriculture or the Commissioner.

SEC. 227. Whenever any potatoes, upon the sale of which a tax is required to be paid, are sold, without the use of the proper stamps, or whenever a change in the form of potatoes upon which a tax is required to be paid occurs, without the payment of such tax, it shall be the duty of the Commissioner, within a period of not more than two years after such sale or change in the form, upon satisfactory proof, to estimate the amount of the tax which has been omitted to be paid, and to make the assessment therefor, and certify the same to a collector. The tax so assessed shall be in addition to the penalties imposed by law.

EXPORTS

SEC. 228. Under such rules and regulations as the Commissioner, with the approval of the Secretary of the Treasury, may prescribe, the taxes imposed under subsection (a) of section 202 of this title shall not apply in respect to potatoes sold for export to any foreign country or for shipment to a possession or Territory of the United States, and in due course so exported or shipped. Under such rules and regulations the amount of any such tax erroneously or illegally collected in respect to such potatoes so exported or shipped may be refunded to the exporter or shipper of the potatoes instead of the taxpayer if the taxpayer waives any claim for the amount so to be refunded.

IMPORTS

SEC. 229. In order to secure equality between domestic and foreign producers of potatoes and in order to prevent the taxes imposed by subsection (a) of section 202 from resulting in disadvantages to producers of potatoes in the continental United States, the Secretary of Agriculture is hereby authorized and directed to, from time to time by orders and regulations—

(a) For each allotment year or any part thereof that the taxes imposed by subsection (a) of section 202 of this title are in effect, establish quotas for the entry or the importation into the continental United States of potatoes produced in any Territory or possession of the United States, or any foreign country. Such quotas shall be based upon that percentage of the annual average quantity of such potatoes brought or imported into the continental United States during the years 1929–1934, inclusive, which is equal to the percentage that the quantity proclaimed by the Secretary of Agriculture under section 203 of this title is of the annual average of the quantities of potatoes sold in the continental United States during the years 1929–1934, inclusive; and

SEC. 230. After such quotas have been established, potatoes imported or brought into the continental United States in excess of any such quotas shall, in addition to any import duties, be subject to an internal-revenue tax equal to the amount of the tax then in effect on the first sale of potatoes produced and sold in the continental United States. The tax levied by this section shall be represented by tax stamps and shall be paid by the owner or importer prior to release from customs custody and control, or entry into the continental United States.

SEC. 231. During any period the tax imposed by subsection (a) of section 202 is in effect all potatoes imported or brought into the continental United States from any possession or Territory of the United States or from any foreign country shall, prior to release from customs custody and control, in accordance with such rules and regulations as the Commissioner, with the approval of the Secretary of the Treasury, shall prescribe as necessary or desirable to facilitate the collection of the taxes levied by this title, be packed in closed and marked containers. The time and method of such packaging and the time and method of attaching or affixing the stamps required by the preceding section shall be established in accordance with such regulations as the Commissioner shall prescribe. All sales of such potatoes, after release thereof from customs custody and control or entry in the continental United States, shall be in packages in the same manner and under the same terms and conditions as required for the sales of potatoes harvested and sold in the continental United States.

SEC. 232. The provisions of sections 229 and 230 shall not be applicable to potatoes produced in the Republic of Cuba and imported and entered for consumption into the continental United States during the period from December 1 to the last day of the following February, inclusive, in any years: *Provided*, That if the Secretary of Agriculture at any time finds that the importation of potatoes from the Republic of Cuba during such period is, or threatens to result in, unduly depressing the potato market in or for any potato-producing area of the continental United States, he shall proclaim such findings and the provisions of sections 229 and 230 shall be applicable to all potatoes thereafter imported into the continental United States from the Republic of Cuba.

SEC. 233. This title may be cited as the "Potato Act of 1935."

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Form M-76

UNITED STATES
DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION

MARKETING AGREEMENT SERIES—AGREEMENT No. 39
LICENSE SERIES—LICENSE No. 11

AMENDMENT TO MARKETING AGREEMENT AND AMENDED LICENSE FOR SOUTHERN RICE MILLING INDUSTRY

Amendment to marketing agreement approved and executed by the Secretary of Agriculture July 20, 1934. Effective 12:01 a.m. eastern standard time, July 21, 1934

Amendment to amended license issued by the Secretary of Agriculture July 20, 1934. Effective 12:01 a.m. eastern standard time July 21, 1934

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AMENDMENT TO MARKETING AGREEMENT FOR SOUTHERN RICE MILLING INDUSTRY

The parties to this Amendment of the Marketing Agreement for Southern Rice Milling Industry are the undersigned millers and the Secretary of Agriculture of the United States (hereinafter referred to as the "Secretary").

Whereas, it is the declared policy of Congress, as set forth in section 2 of the Agricultural Adjustment Act, approved May 12, 1933, as amended (hereinafter referred to as the "Act").

(1) To establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; the base period in the case of all agricultural commodities except tobacco being the pre-war period, August 1909–July 1914, and in the case of tobacco, the base period being the post-war period, August 1919 to July 1929;

(2) To approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets;

(3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the pre-war period, August 1909–July 1914;

And

Whereas, the Secretary, pursuant to Section 8 (2) of the Act, executed on March 5, 1934, a Marketing Agreement for Southern Rice Milling Industry (hereinafter referred to as the "Marketing Agreement"), and

Whereas, Article XVIII of the Marketing Agreement provides:

Any amendment to this Agreement shall become effective at the date designated by the Secretary, upon approval of such amendment by the Secretary, provided that such amendment shall have first been approved by Millers who milled or exported more than one-half of the total rough rice milled and exported during the last three preceding crop years.

and

Whereas, it is proposed that the Marketing Agreement be amended so as to read as set forth in this Amendment, which amendment of the Marketing Agreement will tend to correct conditions now obtaining in the production of rice in Louisiana, Arkansas and Texas, and the marketing, distribution and other handling thereof and which will tend to effectuate the declared policy of the Act; and

Whereas, the parties hereto, for such purposes, desire to amend the Marketing Agreement;

Now, therefore, the parties hereto agree as follows:

SECTION 1. That the Marketing Agreement (except the signatures thereto, and the "*Now, therefore*" paragraph immediately preceding the Acting Secretary's signature) be amended to read as follows:

MARKETING AGREEMENT FOR SOUTHERN RICE MILLING INDUSTRY

ARTICLE I—PURPOSES

The parties to this Agreement are the contracting millers and the Secretary of Agriculture of the United States.

Whereas, it is the declared policy of Congress as set forth in section 2 of the Agricultural Adjustment Act, approved May 12, 1933, as amended—

(*a*) To establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; the base period in the case of all agricultural commodities except tobacco, being the pre-war period, August 1909-July 1914, and in the case of tobacco, the base period being the postwar period, August 1919-July 1929;

(*b*) To approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets;

(*c*) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the pre-war period, August 1909-July 1914;

And—

Whereas, pursuant to the Agricultural Adjustment Act, as amended, the parties hereto, for the purpose of correcting conditions now obtaining in the production of rice in Louisiana, Arkansas and Texas and the marketing, distribution and other handling thereof, and to effectuate the declared policy of the Act, desire to enter into a marketing agreement under the provisions of section 8 (2) of the Act;

Now, therefore, the parties hereto agree as follows:

ARTICLE II—DEFINITIONS

SECTION 1. As used in this Agreement—

(1) The term "Secretary" means the Secretary of Agriculture of the United States of America.

(2) The term "Act" means the Agricultural Adjustment Act, approved May 12, 1933, as amended.

(3) The term "person" means individual, partnership, corporation, association, or any other business unit.

(4) The term "rough rice" means rice from which the hull has not been removed.

(5) The term "clean rice" means rice which has been converted into marketable and edible form.

(6) The term "barrel" means a unit of 162 pounds of rough rice.

(7) The term "bushel" means a unit of 45 pounds of rough rice.

(8) The term "pocket" means a container holding 100 pounds net of clean rice.

(9) The term "packaged rice" means clean rice, packed in any type of container, having a net weight of 5 pounds or less.

(10) The term "sack" or "bag" means every container of unknown, irregular or random weight; "stack" or "lump sum" means without respect to quantity, quality or condition; and "round" means purchasing without respect to grade.

(11) The term "customary point of delivery" means either the place at which the rice is actually produced, the public warehouse nearest the place at which the rice is actually produced, or the shipping point nearest the place at which the rice is actually produced, at the option of the producer.

(12) The term "miller" means any person milling rice grown in Louisiana, Arkansas or Texas; or milling rice in Texas, Tennessee, Arkansas or Louisiana; or exporting rough rice grown in Louisiana, Arkansas or Texas; or marketing such rice milled by himself; or any affiliate or subsidiary milling or marketing rice grown in Louisiana, Arkansas or Texas.

(13) The term "contracting miller" means a miller who becomes a party signatory to this Agreement according to the terms hereof.

(14) The term "importer" means any person within the territorial jurisdiction of the Act who first handles for sale or sells within the territorial jurisdiction of the Act any rice produced without the territorial jurisdiction of the Act, except as to rice imported and under bond for re-exportation.

(15) The term "producer" means any person engaged in Louisiana, Arkansas or Texas, in producing rough rice for sale.

(16) The term "Millers Advisory Council" means the Millers Advisory Council created pursuant to article XI.

(17) The term "Millers Committee" means the Committee created and/or continued pursuant to article XII.

(18) The term "Producers Committee" means the Producers Committee created pursuant to article XIV.

(19) The term "Rice Section" means the Rice Section of the Agricultural Adjustment Administration.

(20) The term "purchase" includes a contract of purchase and a contract to purchase.

(21) The term "sell" or "sale" includes a contract to sell and a contract of sale.

(22) The term "base price" means a minimum price stated in, or fixed by the Secretary pursuant to, section 2 of article III.

(23) The term "Marketing Fund" means a Marketing Fund referred to, and/or provided for, in article VII.

(24) The term "crop year" means the period from July 1 to June 30, both inclusive.

(25) The term "effective period" means the period from the effective date of this Agreement during which it shall continue in force in accordance with its terms.

(26) The term "books and records" means books, records, accounts, contracts, documents, memoranda, papers, correspondence, or other data.

(27) The term "subsidiary" means any person, of or over whom a contracting miller or an affiliate of a contracting miller has, or several contracting millers collectively have, either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner.

(28) The term "affiliate" means any person (and/or any subsidiary thereof) who has, either directly or indirectly, actual or legal control of or over a contracting miller, whether by stock ownership or in any other manner.

ARTICLE III—MINIMUM PRICES FOR ROUGH RICE

SECTION 1. Rough rice shall be purchased and sold in units of barrels or bushels and no contracting miller shall purchase or sell rough rice round or by sack, bag, stack, or lump sum.

SEC. 2. The minimum prices for number one grade prime A milling quality of the following varieties of rough rice shall be, until and except as changed by the Secretary:

Variety:	*Per barrel of 162 pounds*
Early Prolific	$2.75
Japan	2.85
Louisiana Pearl	3.00
Blue Rose	3.15
Lady Wright	3.15
Early Wright	3.15
Edith	3.40
Stormproof	3.40
Fortuna	3.45
No. 2702 (Nira)	3.45
Rexoro	3.50

The Secretary is hereby authorized and empowered to change one or more of said minimum prices at any time and from time to time during the effective period. The Secretary is further authorized and empowered to fix minimum prices for said grade of other varieties of rough rice at any time and from time to time during the effective period. Any minimum price for such grade of any variety of rough rice set forth in this section or fixed by the Secretary pursuant to this section shall be deemed to be the "base price" for such variety.

SEC. 3. The minimum prices for other grades of each variety of rough rice shall be the base price for such variety plus the premiums or minus the discounts set forth in the schedule which is annexed hereto, made a part hereof and marked "Schedule 1". Said schedule, or any part thereof, may at any time and from time to time be changed by the Secretary.

SEC. 4. During the effective period, the net price paid or received by any contracting miller for rough rice shall be not less than, and each contracting miller purchasing or receiving rough rice shall be obligated to pay therefor not less than, the minimum price for the corresponding variety and grade, determined pursuant

to this article and Schedule 1, prevailing at the time of the purchase of such rough rice by or from such miller; *Provided, however*, That payment for rough rice of the crop of 1934 or any later year received by contracting millers on or after July 1, 1934, shall be made as hereinafter provided in article VIII. Such minimum prices are for delivery at customary points of delivery, as defined in article II.

SEC. 5. In the event of a controversy with regard to the proper variety or grade of any rough rice, said rice shall be graded by a Federal or Federal-State Grading Office. Contracting millers shall abide by the certificate of grade and variety issued by such Grading Office and the expense of such sampling and grading shall be adjusted by agreement between the parties to such controversy.

SEC. 6. Nothing in this Agreement and nothing done pursuant to section 7 shall be so construed as to give to any contracting miller who shall have by agreement purchased rough rice as being of a certain variety and grade at a price above the minimum price for such variety and grade the privilege of taking any part of such rough rice which may be of lower grade at a price lower than such agreed price, less the discount applicable to such lower grade of rough rice.

SEC. 7. The Secretary is hereby authorized at any time during the effective period to prescribe that there shall be compulsory grading of rough rice and to name a governmental agency by which such grading shall be done. Thereafter during the effective period, no contracting miller shall accept or purchase any rough rice which is not accompanied by a certificate or certificates as to the grade or grades of such rough rice, issued by the person or persons and as the Secretary shall have prescribed, nor except upon the basis of the grade or grades of such rough rice indicated in such certificate or certificates.

SEC. 8. The Secretary is hereby authorized at anytime during the effective period to prescribe that rough rice shall be weighed by a licensed and/or bonded weigher before it is accepted by a contracting miller and that rough rice shall be purchased by a contracting miller on the basis of the weight certified by such weigher. Thereafter, during the effective period, no contracting miller shall accept delivery of any rough rice which shall not have been weighed by a licensed and/or bonded weigher, as the Secretary shall have prescribed, nor accept or purchase rough rice except on the basis of weight certified by such weigher.

SEC. 9. No contracting miller shall purchase rough rice from any person other than the producer thereof, or such producer's successor in interest by operation of law, except upon evidence submitted by the seller satisfactory to the Millers Committee that (1) such producer or such successor has received therefor not less than the minimum price prevailing at the time it was sold by such producer or such successor, and (2) if received by the miller on or after July 1, 1934, such producer or such successor and the Secretary have received payments therefor as hereinafter provided in article VIII.

SEC. 10. Any purchase by, or for the account of, a contracting miller, whether from a person as the seller or at or under any sale to enforce a lien or a judicial sale or otherwise, shall be deemed a purchase by such miller.

ARTICLE IV—METHOD OF DETERMINING MINIMUM SALE PRICES FOR CLEAN RICE

SECTION 1. To effectuate the purposes of this Agreement and to aid in the carrying out and enforcement of the provisions hereof, no contracting miller shall offer for sale, sell or deliver for domestic consumption any quantity of clean rice for an amount per pocket less than the sum of

(*a*) the minimum price, determined pursuant to article III and Schedule 1, for the grade, variety and quantity of the rough rice from which such clean rice was milled,

(*b*) the conversion charge for such quantity of rough rice and prevailing at the time of such offer, sale or delivery, and

(*c*) the published carlot rail rate for transporting such rough rice from the customary point of delivery to the miller's mill, and

(*d*) the administrative assessment for such quantity of rough rice and prevailing when such rice was milled;

Provided, however, that any contracting miller may offer clean rice for sale, for export to foreign countries, on the foregoing basis less a maximum discount of 20 cents per barrel of such rough rice and may, if the rice is actually exported, sell or deliver clean rice for export to foreign countries on said basis less said maximum discount. The determination of the Millers Committee as to whether or not clean rice is actually exported shall be final and conclusive, subject to appeal to the Secretary. Said minimum amounts, below which this section provides that

clean rice shall not be offered for sale, sold, or delivered by a contracting miller, apply f.o.b. the miller's mill.

SEC. 2. The conversion charge per barrel of rough rice shall, until and except as changed by the Secretary, be an amount equal to the sum of (*a*) seventy (70) cents per barrel of rough rice, (*b*) nine (9) cents per barrel of rough rice if standard one-hundred pound single packages are used for the clean rice, and (*c*) if cotton or paper inner linings or regular burlap outer slips are used for the clean rice, an additional five (5) cents per barrel of rough rice, or (*d*) if any other type of container is used for the clean rice, the actual invoice price for the container used. The Secretary is hereby authorized and empowered at any time and from time to time during the effective period, after due notice and opportunity for hearing, to increase or decrease the amount of, and/or change the basis of computation of, the conversion charge.

SEC. 3. The provisions of this article are without prejudice to the right of any miller who asserts that such conversion charge is in excess of or below the conversion charge necessary to accomplish the purposes set forth in section 1 of this article, to a hearing on the question of a change in such conversion charge, in accordance with any applicable General Regulations, Agricultural Adjustment Administration or conducted in such manner as the Secretary may prescribe.

SEC. 4. The provisions of this article shall not be applicable to any sales to any public unemployment relief agency (whether local, State or Federal), to any private unemployment relief agency cooperating with or accredited by any public unemployment relief agency, to any charitable institution or agency, to any hospital in connection with its charitable operations or to any government agency (whether local, State or Federal) when such sales are upon competitive bids; *Provided, however*, That the Millers Committee may from time to time, with the prior approval of the Secretary, prescribe proper safeguards to prevent the reintroduction into the channels of trade of rice so sold.

SEC. 5. No contracting miller, or its officers, employees or agents shall employ any method or device whereby clean rice is sold or offered for sale or delivered for less than any amounts applicable thereto pursuant to this article, whether by discount, rebate, redeemable certificate, stamps and/or books, free services or merchandise, credit for returns, loans or credit outside the usual course of business, or combining prices for rice together with another commodity sold, or by subsidy given for business or assistance in procuring business, or otherwise.

ARTICLE V—TERMS OF SALE

SECTION 1. No contracting miller shall sell rice except on the following terms:

(*a*) All clean rice, other than packaged rice, for delivery in the Continental United States by rail or water, as follows: sight draft, order notify, bill of lading attached, payable on arrival, with one (1) percent discount allowed from f.o.b. mill price for payment within ten (10) days from date of shipment, regardless of whether the goods have arrived or not, and only net amount of invoice and draft to be accepted thereafter, provided, however, that on all sales of rice stored in warehouses located outside the states of Louisiana, Texas, Arkansas, and Tennessee, the terms of sale shall be cash less 1 percent discount for payment in ten (10) days after delivery to the purchaser.

(*b*) All truck deliveries, as follows: Cash less 1 percent within ten (10) days of delivery to carrier.

(*c*) Byproducts, as follows: Sight draft, order notify, bill of lading attached, net cash payable on arrival.

(*d*) Shipments to Puerto Rico, as follows: Net cash with draft drawn dated same as bill of lading, with bill of lading and marine insurance certificate attached, seller's order, notify buyer, and draft to be paid promptly upon arrival and examination of goods, but, not to exceed five full business days after goods have been discharged from ship; except, however, that when sale is to a buyer resident in Continental United States, terms shall be net cash, draft with bill of lading attached, payable on arrival and examination of goods at American destination (port of shipment), or cash less 1 percent if paid within ten (10) days from date of shipment.

(*e*) On all sales for direct shipment to foreign countries, the terms shall be net f.a.s. or net c.i.f. at the option of the seller; provided, however, that on all sales for direct shipment to Canada or Mexico which move all rail the terms of sale shall be net f.o.b. seller's mill.

SEC. 2. All sales and deliveries of clean or rough rice shall be pursuant to written contract which is firm as to all parties thereto.

SEC. 3. No firm contract for the sale or delivery of rough or clean rice shall be cancelled except upon the prior approval of the Millers Committee or its agent.

SEC. 4. Contracting millers (except a cooperative association within the meaning of section 7 of article XV) shall pay cash at time of delivery for all rice purchased by them during the effective period.

ARTICLE VI—BROKERAGE

SECTION 1. No contracting miller shall pay a brokerage charge unless a brokerage service has in fact been rendered and no contracting miller shall pay more than one brokerage charge on any transaction.

SEC. 2. No contracting miller shall pay any brokerage charge in excess of the following schedule:

(*a*) On clean rice and rice flour, except packaged rice, sold within the boundaries of the Continental United States, 8 cents per 100 pounds.

(*b*) On brewers rice and screenings, 5 cents per 100 pounds.

(*c*) On rice bran and rice polish and other rice byproducts, 50 cents per ton, and on rice hulls, 25 cents per ton.

(*d*) On all rice sold in Puerto Rico, 8 cents per 100 pounds.

(*e*) On all sales made for direct shipments to foreign countries through a broker resident outside of the Continental United States 2% of the c.i.f. sales price; on sales for direct shipment to foreign countries through brokers resident in the Continental United States 2% of the c.i.f. sales price, plus 5¢ per 100 lbs.

SEC. 3. No contracting miller shall pay any brokerage charge on the resale of rejected rice when such resale is made by the same broker.

ARTICLE VII—MARKETING FUND

SECTION 1. (*a*) Each contracting miller who during the effective period shall mill rice of any variety or grade, shall contribute and pay to the Millers Committee a Marketing Assessment at the rate of 5 cents for each barrel of rough rice milled by him; *Provided, however*, That the Millers Committee, with the prior approval of the Secretary, may at any time and from time to time reduce or waive the amount of the Marketing Assessment as to all or any part of the rice milled during any crop year.

(*b*) Any Marketing Assessment payable by a contracting miller on rice milled by such miller shall become due and payable and be paid on or before the 15th day of the calendar month next succeeding the date on which such rice was milled.

(*c*) If any contracting miller fails to pay any such Marketing Assessment on or before the date on which it is due, there shall immediately become due and payable and be paid by such contracting miller to the Millers Committee an additional amount, equal to the prevailing Marketing Assessment, for each barrel of rough rice milled by him in respect of which the Marketing Assessment has not been paid.

(*d*) The payments made to the Millers Committee pursuant to this section shall constitute the "Marketing Fund No. 2".

SEC. 2. Marketing Fund No. 2 shall be deposited in banks to be selected by the Millers Committee from a list proposed by the Millers Advisory Council and may be invested by the Millers Committee in only securities of the United States of America.

SEC. 3. It is the intention of the parties hereto that Marketing Fund No. 2 shall be used to increase the consumption of American grown rice and to create new markets through research, educational work, demonstrations, advertising and such other means and mediums as the Millers Committee and the Secretary may approve, and to make advances to the Secretary pursuant to section 6 of article VIII hereof. Marketing Fund No. 2 shall be expended only in accordance with such budget or budgets as may from time to time be approved by the Millers Committee and the Secretary.

SEC. 4. (*a*) When the first members of the Millers Committee have been selected by the Millers Advisory Council and have organized, the unexpended balance of the Marketing Fund or Marketing Funds, accumulated pursuant to article VII of the Marketing Agreement for Southern Rice Milling Industry dated October 13, 1933, and/or this Agreement prior to its amendment, in the hands of the Control Committee as constituted under such Marketing Agreements, shall be paid, delivered, and turned over by the members of said Control Committee to the first members of the Millers Committee selected by the Millers Advisory Council, it being the intention of the parties hereto that such unexpended balance

(herein referred to as "Marketing Fund No. 1") may be used by the Millers Committee for expenses incurred by the Millers Committee and/or by any other committees hereunder prior to September 1, 1934 and the surplus shall be used by the Millers Committee, subject to disapproval by the Secretary, to increase consumption of American grown rice, to create new markets, to maintain reasonable domestic prices by financing the export of rice and to make advances to the Secretary pursuant to section 6 of article VIII hereof, and that the Millers Committee shall be deemed to be the successor of the Control Committee.

(*b*) Marketing Fund No. 1 may be deposited in such banks as the Millers Committee or its predecessor may have selected or as the Millers Committee shall hereafter select and/or may be invested or left invested by the Millers Committee in only securities of the United States of America.

ARTICLE VIII—CROP CONTROL

To control the production of rough rice in the states of Louisiana, Arkansas and Texas, the Secretary shall institute an annual crop control program in the following manner:

SECTION 1. *Trust fund.*—To provide funds to be paid to producers who cooperate in any such crop control program, the contracting millers agree to establish a trust fund in the following manner:

(*a*) Commencing July 1, 1934, each contracting miller, upon making payment for any rough rice (of the crop of 1934 or any later year) purchased, shall make (1) a payment to the owner thereof, and (2) a payment to the Secretary. Anything hereinabove to the contrary notwithstanding the amounts of these payments shall be such that the payment to the owner equals sixty (60) percent, and the payment to the Secretary forty (40) percent, of the sum of the two payments, but in no event shall such sum be less than the minimum price payable pursuant to article III and Schedule 1 hereof. Payments made pursuant hereto shall relieve any miller from any further liability under this article to the Secretary or the owner of the rough rice.

(*b*) All payments to the Secretary shall be made to the order of "United States Department of Agriculture", at such time and in such manner as the Secretary may from time to time direct, and shall be held as a trust fund for the purposes and uses herein set forth.

(*c*) The ratio herein fixed between the payment to owners of rough rice and the payment to the Secretary shall apply on all rough rice (of the crop of 1934 or any later year) received during the crop year beginning July 1, 1934, and during each subsequent crop year, unless changed by the Secretary by notice to each miller before July 1 of any year.

SEC. 2. *Allotments to producers.*—(*a*) The Secretary shall determine the total quantity of rice which should be produced in said states, and each of them, during any crop year.

(*b*) The producers in each of said states shall be invited to submit applications for acreage allotments and production quotas, stating for each of such base years as the Secretary may designate (1) the acreage on which rice was planted by the producer, and (2) the quantity of rough rice produced on such acreage. Such applications shall be made upon such forms and at such times as the Secretary may prescribe, and may be verified and corrected by the Secretary.

(*c*) The Secretary shall determine the average annual production of rice during said base years, and shall compute the percentage which the quantity of rice which should be produced in said year (determined by the Secretary pursuant to paragraph (*a*) of this section) bears to such average annual production. The Secretary shall then fix acreage allotments and production quotas by applying such percentage to the average annual acreage and the average annual production, respectively, of each producer during the base period, as disclosed by his application, and shall advise each producer of his allotment. Individual applications, the recitals of which are not supported in the manner prescribed by the Secretary, may be adjusted by the Secretary before the assignment of acreage allotments and production quotas to conform to official data of the Department of Agriculture.

SEC. 3. *Payments to producers.*—Each producer who limits the acreage planted by him in said year to the allotment so assigned to him, such limitation to be confirmed by the Secretary as he may determine, shall receive from the trust fund by the end of the crop year, payments aggregating a sum not exceeding the total sum paid to the Secretary during said crop year, pursuant to section 1 of this article, on rough rice purchased from said producer within his production quota, less his

proportionate share of the expenses incurred pursuant to this article which shall be paid by the Secretary out of the trust fund.

SEC. 4. *Committees.*—To assist in the administration of any such production control program, the Secretary may authorize the formation of committees to verify applications, compute production quotas and acreage allotments, check acreage seeded by producers, and to perform such other functions as the Secretary may designate, subject to and in the manner prescribed by the rules and regulations of the Secretary.

SEC. 5. *Rules and regulations.*—The Secretary may for any purpose necessary to the proper effectuation of any such crop control program, prescribe forms to be executed by producers, which may be in the form of contracts or otherwise, and rules and regulations, not inconsistent herewith, with regard to allotments, quotas and payments, and the right of any producer to such payments shall be subject to such rules and regulations.

SEC. 6. *Advances and surplus funds.*—If funds are required for expenses in initiating any such crop control program before sufficient payments have been made into the trust fund, the Control Committee or the Millers Committee shall advance such required funds to the Secretary out of either or both of the Marketing Funds referred to in sections 3 and 4 of article VII hereof. Such advances shall be repaid to the Millers Committee by the Secretary from the trust fund before payment therefrom of any benefit payments to producers. Any moneys remaining in the trust fund at the end of any crop year, after all proper payments to producers have been made and all expenses paid, shall be used and/or distributed as the Secretary shall determine to effectuate the purpose of the Act.

SEC. 7. For the purposes of this article, rough rice shall be deemed to be of the 1934 crop, or of the crop of any later crop year during which it is received by the miller, unless otherwise certified in accordance with regulations and/or administrative orders heretofore or hereafter issued and/or made by the Secretary.

ARTICLE IX—REPORTS

SECTION 1. *To the Secretary.*—(*a*) The contracting millers shall severally, from time to time, upon the request of the Secretary, furnish him information, on and in accordance with forms of reports to be supplied by him, for the purpose of (1) assisting the Secretary in the furtherance of his powers and duties with respect to this Agreement, and/or (2) enabling the Secretary to ascertain and determine the extent to which the declared policy of the Act and the purposes of this Agreement are being effectuated, such reports to be verified under oath. The Secretary's determination as to the necessity of and justification for the making of such reports and the information called for thereby shall be final and conclusive.

(*b*) The contracting millers also severally agree that, for the same purposes and/or to enable the Secretary to verify the information furnished him on said forms of reports, all their books and records, and the books and records of their affiliates and subsidiaries, shall during the usual hours of business be subject to the examination of the Secretary. The Secretary's determination as to the necessity of and justification for any such examination shall be final and conclusive.

(*c*) The contracting millers and their respective affiliates and subsidiaries shall severally keep books and records which will clearly reflect all financial transactions of their respective businesses and the financial condition thereof.

(*d*) All information furnished the Secretary pursuant to this article shall remain confidential in accordance with the applicable General Regulations, Agricultural Adjustment Administration.

SEC. 2. *To the Millers Committee.*—(*a*) To enable the Millers Committee to perform its duties hereunder and to effectuate the purpose of this Agreement each contracting miller shall promptly furnish in such form and substantiated in such manner as the Millers Committee may from time to time prescribe, information requested by the Millers Committee. The Secretary may at any time disapprove any request for information or any forms prescribed pursuant hereto.

(*b*) The details of such reports shall be confidential and the Millers Committee shall not disclose to any person other than the Secretary detailed information concerning the business of any individual miller. It shall be the duty of the Millers Committee to furnish to the Secretary upon request any and all information furnished by the millers to the Millers Committee.

(*c*) The Millers Committee shall, if and so far as practical and consistent with the proper administration and enforcement of this Agreement and of any license supplementary hereto issued pursuant to section 8 (3) of the Act, provide

for the receipt by a confidential employee of the Millers Committee of all reports and information received from millers pursuant hereto and/or any such license and for disclosing the same only in summarized form to the Millers Committee, its members or others (except the Secretary).

SEC. 3. *To Producers.*—In order to enable the producers to support applications for acreage allotments and production quotas pursuant to article VIII hereof, the contracting millers shall give to any producer upon request and without charge all available information with regard to the quantities of rough rice purchased from such producer in past years and such other information as may be necessary or desirable to the proper effectuation of article VIII.

ARTICLE X—EXPENSES

SECTION 1. To carry out the provisions of this Agreement (except those of article VII hereof) and of any license supplementary hereto, issued pursuant to section 8 (3) of the Act, the Millers Committee is authorized and directed:

(*a*) From time to time, to submit to the Secretary for his approval, subject to such notice and opportunity for hearing as the Secretary shall prescribe, an itemized budget of its estimated expenses for the foregoing purposes;

(*b*) Upon the approval by the Secretary of such budget, to incur such reasonable obligations and to make such reasonable expenditures as may be necessary and proper and as are included within such budget.

SEC. 2. (*a*) Each contracting miller who during the effective period shall mill rice of any variety or grade, shall contribute and pay to the Millers Committee an Administrative Assessment at the rate of 5 cents for each barrel of rough rice milled by him; *Provided, however*, That the Millers Committee, with the prior approval of the Secretary, may at any time and from time to time reduce or waive for any period the amount of the Administrative Assessment as to all or any part of the rice milled during any crop year; *Provided, further however*, That if, on the basis of any budget so approved, the Secretary shall be of the opinion that the current Administrative Assessment is too high or too low, he may decrease it or increase it to not more than 5 cents per barrel for the period covered by such budget, or any part of such period.

(*b*) Any Administrative Assessment payable by a contracting miller on rice milled by such miller shall become due and payable and be paid on or before the 15th day of the calendar month next succeeding the date on which such rice was milled.

(*c*) If any contracting miller fails to pay any such Administrative Assessment on or before the date on which it is due, there shall immediately become due and payable and be paid by such contracting miller to the Millers Committee an additional amount, equivalent to the prevailing Administrative Assessment, for each barrel of rough rice milled by him in respect of which the Administrative Assessment has not been paid.

SEC. 3. The Millers Committee is authorized and empowered, subject to the prior approval of the Secretary, to institute legal proceedings in the name of its individual members as a committee and to take such other steps as may be necessary to collect or enforce the payment of funds from persons liable therefor pursuant to the foregoing sections of this article. Unless otherwise provided in the notice of termination executed by the Secretary, the foregoing power shall continue after the termination of this Agreement, with respect to any funds which need to be raised and which are unpaid at the time of such termination. Nothing herein contained shall be construed to be in derogation or modification of the rights of the Secretary at any time to institute legal proceedings or to take such other steps as may be necessary to collect or enforce the payment of any such funds.

SEC. 4. Any funds (except any in or derived from a Marketing Fund) which the Millers Committee shall have on hand, or be entitled to receive, under this article, upon August 1 of 1935 or any subsequent year over and above any amount necessary to meet outstanding obligations, shall on or before December 15 of such year be returned to the millers pro rata in proportion to their contributions made pursuant to this article, and/or pursuant to any license which may be issued supplementary to this Agreement, pursuant to section 8 (3) of the Act; *Provided, however*, That any funds (except any in or derived from a Marketing Fund) which the Millers Committee shall have on hand, or be entitled to receive under this article or any such license, upon the termination of both this Agreement and any such license, over and above any amount necessary to meet outstanding obligations, shall at such time be returned to the millers pro rata in

proportion to their contributions made pursuant to this article, and/or pursuant to any such license.

ARTICLE XI—MILLERS ADVISORY COUNCIL

SEC. 1. A Millers Advisory Council shall be established consisting of members who shall be selected in accordance with the provisions of this article and who shall serve until they are removed or resign. The initial members shall be selected within ten days after notice from the Rice Section. No delay in the selection of any member or successor shall be deemed to invalidate any such selection.

SEC. 2. One member, and each of his successors, shall be selected by each miller who is signatory to this Agreement and/or is licensed by any license supplementary hereto issued pursuant to section 8 (3) of the Act, by filing with the Secretary an instrument duly executed by such miller designating the individual whom he has selected. A member, or his successor, may be removed by the miller which designated him. Such removal shall become effective upon the filing with the Secretary of an instrument duly executed by such miller or upon a date specified in any such instrument, whichever is later.

SEC. 3. Each miller selecting a member of the Millers Advisory Council may, in the same manner, at any time, select an alternate, to act in the place and stead of such member (a) in his absence, and/or (b) in the event of his removal, resignation, or disqualification, until a successor for his unexpired term has been selected.

SEC. 4. Any question as to whom a miller has selected as a member or alternate shall be submitted to the Rice Section, and its decision shall be final and conclusive.

SEC. 5. Members of the Millers Advisory Council shall serve without compensation and shall not be entitled to expenses although necessarily incurred in the performance of their duties hereunder.

SEC. 6. A member of the Millers Advisory Council shall have only one vote as to each matter coming before said Council except as provided for the selection of members of the Millers Committee.

SEC. 7. The Rice Section shall call an organization meeting of the Millers Advisory Council at such time and place as the Rice Section may designate.

SEC. 8. The Millers Advisory Council shall have the following duties and powers:

(*a*) To elect a chairman and, from time to time, such other officers as it may deem advisable, and to adopt rules and regulations for the performance of its duties under this agreement.

(*b*) To appoint and define the duties of additional committees or subcommittees to assist it in the performance of any of its duties and functions hereunder.

(*c*) To select, as provided in article XII, the members of the Millers Committee.

(*d*) To advise with the Millers Committee.

(*e*) To act as an intermediary between the Millers Committee and the Millers.

(*f*) To propose a list of banks to the Millers Committee.

(*g*) From time to time, to submit to the Secretary for his approval, subject to such notice and opportunity for hearing as the Secretary shall prescribe, an itemized budget of its estimated expenses; and, upon the approval by the Secretary of such budget, to incur such reasonable obligations and to make such reasonable expenditures as may be necessary and proper and as are included within such budget.

SEC. 9. A member of the Millers Advisory Council shall be disqualified from voting in the selection of members of the Millers Committee, if the miller who selected said member of the Millers Advisory Council has failed to file with the Rice Section, on and in accordance with a form approved by the Rice Section, a statement of the volume of rough rice milled or exported by such miller during the three crop years last past.

ARTICLE XII—MILLERS COMMITTEE

SECTION 1. The name of the Control Committee as constituted under the Marketing Agreement for Southern Rice Milling Industry, dated October 13, 1933, and/or this Agreement prior to its amendment is hereby changed to the "Millers Committee".

SEC. 2. The present members of said Millers Committee shall continue in office until the selection of their successors whereupon they shall cease to hold office.

SEC. 3. The Millers Committee shall consist of seven members who, except as provided in section 2, shall be selected in accordance with the provisions of this article and shall serve until July 1 of the year following the date of their respective selections and until their respective successors are selected. The initial members hereafter selected shall be selected at the initial meeting of the Millers Advisory Council and their respective successors (other than those selected to fill vacancies) shall be selected annually thereafter at least thirty days prior to the termination of the term of office of their respective predecessors. No delay in the selection of any member or successor shall be deemed to invalidate any such selection.

SEC. 4. From a list of nominees submitted by members of the Millers Advisory Council, all seven members (and each of their successors) of the Millers Committee shall be selected in the following manner: Each member (not disqualified) of the Millers Advisory Council shall be entitled to a vote equal to seven times the weight which the volume of rough rice milled or exported by the miller who selected him during the three preceding crop years bears to the total volume of rough rice milled or exported by all millers during said years. The vote of any member of the Millers Advisory Council may be cast for one nominee or distributed among two or more nominees as such member shall prefer. The seven nominees receiving the largest number of votes shall be the members of the Millers Committee.

SEC. 5. Upon the selection (other than to fill a vacancy) of any members of the Millers Committee, the secretary of the Millers Advisory Council shall certify to the Secretary, the name and address of each such member, and the date or dates of their selection. The members so certified to the Secretary shall be deemed for all purposes to be the duly selected members of the Millers Committee, subject, however, to the right of any interested party to protest such selection in accordance with the applicable Administrative Orders issued by the Secretary.

SEC. 6. To fill any vacancy occasioned by the removal, resignation, demise or disqualification of any member of the Millers Committee, a successor for his unexpired term shall be selected by the Secretary of Agriculture.

SEC. 7. Upon the selection of seven of its members, the Millers Committee may organize and commence to function; *Provided, however*, That:

(*a*) This provision shall not affect or supersede any other provision in this Agreement requiring a minimum vote with respect to specified action to be taken by the Millers Committee; and

(*b*) The Millers Committee shall not perform any of its duties or powers herein granted while there are more than two vacancies in its membership.

SEC. 8. The members of the Millers Committee or of any other committee created hereunder (including successors, alternates or persons selected by the Secretary), and any agent or employee appointed or employed by the Millers Committee or by any other committee, shall be subject to removal by the Secretary at any time with or without cause. Each and every order, regulation, decision, determination or other act of the Millers Committee or of any other committee, shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith.

SEC. 9. Members of the Millers Committee shall serve without compensation but shall be entitled to expenses necessarily incurred in the performance of their duties hereunder.

SEC. 10. The powers and duties of the Millers Committee shall be the following:

(*a*) To elect a Chairman and, from time to time, such other officers as it may deem advisable, and to adopt rules and regulations for the performance of its duties under this Agreement.

(*b*) To supervise the performance of this Agreement and to act as an intermediary between the Secretary and the millers.

(*c*) To appoint such employees and/or agents as it deems necessary and to determine the salaries and define the duties of such employees and/or agents.

(*d*) To appoint and define the duties of additional committees or subcommittees to assist it in the performance of any of its duties and functions hereunder.

(*e*) To investigate suspected violations of this Agreement, and, after due notice and opportunity for hearing, to decide, subject to appeal to the Secretary, all questions, disputes and complaints which arise in connection with the performance of this Agreement and which do not concern the interests of producers.

(*f*) To act as provided in, and subject to the provisions of, article XIII, (entitled "Producers Committee and Millers Committee").

(*g*) To pay such expenses of the Producers Committee and/or the Millers Advisory Council as may be included within a budget or budgets approved by the Secretary.

(*h*) The Millers Committee shall keep books and records which will fully reflect its receipts, disbursements and financial transactions. The accounting system and fiscal procedure of the Millers Committee shall be as prescribed or approved by the Secretary, and shall be subject to audit by the Secretary at such times as he shall desire.

(*i*) To cooperate with the Secretary and the Producers Committee and to negotiate and confer with representatives of importers with respect to the formulation of a Marketing Agreement for importers and/or amendments to this Agreement concerning importers.

SEC. 11. The contracting millers agree to abide by the decision of the Millers Committee in any question, dispute, or complaint unless an appeal in writing is taken to the Secretary pursuant to section 3 of article XIII and if such appeal is taken to abide by the decision of the Secretary thereon. Pending the disposition by the Secretary of any such appeal, the parties involved shall abide by the decision rendered by the Millers Committee unless the Secretary shall rule otherwise pending such disposition, provided, that in the case of any decision requiring any payment by a miller, such miller, in case of appeal to the Secretary, shall not be required to make any such payment until such appeal is decided by the Secretary.

SEC. 12. The members of said Control Committee are hereby authorized and directed to assign, transfer and deliver to the members of the Millers Committee and their successors any and all property (whether real, personal or mixed) and any and all books and records which are in their possession or under their control as such committee, and any and all claims which are accrued or which may hereafter accrue to them as such committee. In case of any dispute involving the Control Committee and/or the Millers Committee and/or one or more members of either, the matter shall be referred to the Secretary whose decision shall be final and conclusive.

SEC. 13. It being difficult to ascertain the amount of damage which will be sustained by the parties signatory hereto by reason of the violation of any of the terms hereof by any one of the contracting millers, it is agreed

(*a*) That for each violation of any of the terms of this Agreement pertaining to the sale of clean rice, the offending contracting miller shall, upon demand, pay to the Millers Committee a sum which will represent $1.00 upon each pocket of rice involved in the offending transaction, and

(*b*) That for each violation of any of the terms of this Agreement pertaining to the purchase or sale of rough rice, the offending contracting miller shall, upon demand, pay to the Millers Committee a sum which will represent 50 cents upon each barrel of rough rice involved in the offending transaction.

(*c*) Any and all payments pursuant to subsection 13 (*a*) shall become part of Marketing Fund No. 2.

(*d*) Any and all payments pursuant to subsection 13 (*b*) shall be used to pay to any producer involved in such transaction any amount by which the purchase price was below the applicable minimum price, and any excess shall become part of Marketing Fund No. 2.

ARTICLE XIII.—PRODUCERS COMMITTEE AND MILLERS COMMITTEE

SECTION 1. The Producers Committee and the Millers Committee, acting jointly by majority vote of each committee, shall, after due notice and opportunity for hearing, decide all questions, disputes, and complaints which concern the interests of both producers and millers and which arise in connection with the performance of this Agreement.

SEC. 2. If a member of either the Producers Committee or the Millers Committee shall be an interested party to any complaint or dispute (before it acting alone or jointly with the other committee) or a representative of such an interested party, he shall, for the purpose of the consideration of such dispute or complaint, be disqualified as a member of his committee. Such disqualification, however, shall not be deemed to create a vacancy in his committee within the prohibition of subdivision (*b*) of section 7 of article XII or of section 3 of article XIV.

SEC. 3. An appeal in writing may be taken to the Secretary, in accordance with such applicable regulations or administrative orders as he may approve,

from any decision of either Committee, or of the two Committees acting jointly, by any person aggrieved thereby, within ten days after the decision is announced. Such writing shall be addressed to and filed with the Secretary and a copy thereof shall be forwarded to the committee or committees from whose decision the appeal is taken.

SEC. 4. Pending the decision of any such appeal by the Secretary the parties involved shall abide by the decision of the Producers Committee and/or the Millers Committee, as the case may be, unless the Secretary shall rule otherwise.

SEC. 5. In the event of an appeal, it shall be the duty of the Committee or Committees which rendered the decision from which the appeal is taken to forward to the Secretary the complete record with regard to the subject matter of such appeal.

SEC. 6. In the event that the Producers Committee and the Millers Committee do not agree as to whether a particular question, dispute or complaint or as to whether a particular type of question, dispute or complaint, arising or which might arise in connection with the performance of this Agreement is within the joint jurisdiction of the Producers Committee and the Millers Committee or is within the exclusive jurisdiction of the Producers Committee or is within the exclusive jurisdiction of the Millers Committee, the matter shall be referred for decision to the Secretary, together with such pertinent records as are available and such briefs concerning the matter as either Committee shall deem advisable, which must be filed with him within such time as he shall deem reasonable; and any decision by the Secretary with respect thereto shall be final and conclusive.

ARTICLE XIV—PRODUCERS COMMITTEE

SECTION 1. A Producers Committee shall be established consisting of seven members who and whose successors (and whose alternates, if any) shall be selected by the Secretary and who shall serve until July 1 of the year following the date of their respective selections and until their respective successors are selected.

SEC. 2. Eacn alternate, if any, shall act in the place and stead of the member for whom he is selected to act as alternate (a) in his absence, and/or (b) in the event of his removal, resignation or disqualification, until a successor for his unexpired term has been selected.

SEC. 3. Upon the selection of all of its members, the Producers Committee may organize and commence to function; *Provided, however*, That the Producers Committee shall not perform any of its duties or powers herein granted while there are more than four vacancies in its membership.

SEC. 4. The members of the Producers Committee or of any other committee created hereunder (including successors or alternates), and any agent or employee appointed or employed by the Producers Committee or by any other committee, shall be subject to removal by the Secretary at any time with or without cause. Each and every order, regulation, decision, determination or other act of the Producers Committee or of any other committee, shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith.

SEC. 5. Members of the Producers Committee shall serve without compensation but shall be entitled to expenses necessarily incurred in the performance of their duties hereunder.

SEC. 6. The powers and duties of the Producers Committee shall be the following:

(*a*) To elect a Chairman and, from time to time, such other officers as it may deem advisable, and to adopt rules and regulations for the performance of its duties under this Agreement.

(*b*) To act as an intermediary between the Secretary and the producers, and between the millers and the producers.

(*c*) To appoint and define the duties of additional committees or subcommittees to assist it in the performance of any of its duties or functions hereunder.

(*d*) To investigate suspected violations of this Agreement, if a grower is a party to such violations, and to report to the Secretary any violations it believes to have occurred, together with its recommendations, if any.

(*e*) After due notice and opportunity for hearing, to decide, subject to appeal to the Secretary, all questions, disputes and complaints which arise in connection with the performance of this Agreement and which concern only the interests of the producers.

(*f*) To act as provided in, and subject to the provisions of, article XIII (entitled "Producers Committee and Millers Committee").

(*g*) From time to time, to submit to the Secretary for his approval, subject to such notice and opportunity for hearing as the Secretary shall prescribe, an itemized budget of its estimated expenses; and, upon the approval by the Secretary of such budget, to incur such reasonable obligations and to make such reasonable expenditures as may be necessary and proper and as are included within such budget.

(*h*) To cooperate with the Secretary and the Millers Committee and to negotiate and confer with representatives of importers with respect to the formulation of a Marketing Agreement for importers and/or amendments to this Agreement concerning importers.

ARTICLE XV.—MISCELLANEOUS

SECTION 1. The members of any committee or council, and any employees thereof, shall not be held responsible individually in any way whatsoever to any miller, producer, or any other person, for errors in judgment, mistakes, or other acts either of commission or omission, as such member or employee, except for acts of dishonesty. The liability of the contracting millers hereunder is several and not joint and no contracting miller shall be liable for the default of any other contracting miller.

SEC. 2. Nothing herein contained is or shall be construed to be in derogation or modification of the rights of the Secretary, or of the United States (*a*) to exercise any powers granted by the Act or otherwise and/or (*b*) in accordance with such powers, to act in the premises whenever he shall deem it advisable.

SEC. 3. If any provision of this Agreement is declared invalid or the applicability thereof to any person, circumstance or thing is held invalid, the validity of the remainder of this Agreement and/or the applicability of any provision of this Agreement to any other person, circumstance or thing shall not be affected thereby.

SEC. 4. Any change in a minimum price, conversion charge, premium, or discount and any change in Schedule 1 by the Secretary without the formal approval of contracting millers as provided in article XXII shall be deemed to be upon sufficient notice and any notice provided for herein shall be deemed to be sufficient if notice thereof is given similar to that required by regulations of the Agricultural Adjustment Administration in effect at the time for the amendment of licenses issued pursuant to section 8 (3) of the Act; provided, however, that this section shall not be construed as requiring any such notice.

SEC. 5. The provisions of this Agreement shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the contracting millers. In any transaction by which a contracting miller may divest himself in whole or in part of his business or facilities, the contracting miller as a condition of such transfer shall cause the vendee or assignee to become a party to this Agreement. No contracting miller shall be relieved of any obligation hereunder by reason of any transfer.

SEC. 6. Any contract or agreement entered into by any contracting miller prior to or during the effective period of this Agreement, for the sale or other disposition of rice or for the purchase or other acquisition of rice or in respect of rice shall be deemed to be superseded by the terms and provisions of this Agreement and by any minimum price, conversion charge, premium or discount established pursuant to this Agreement and by any action, decision or determination of the Millers Committee and/or the Secretary in accordance with this Agreement, whether established, done or made prior or subsequent to such contract or agreement, insofar as such contract or agreement is inconsistent with any term or provision of this Agreement or with any such minimum price, conversion charge, premium or discount or with any such action, decision or determination; *Provided, however,* That this section 6 shall not apply to any such contract or agreement hereafter made where the miller making the same reports the same to the confidential employee of the Millers Committee provided for in section 2 (*c*) of article IX (or to the Secretary if no such employee is in office) within five days after the same is made, nor shall this section 6 apply to any such contract or agreement heretofore made for the sale of clean rice if it was in accordance with the provisions of this Agreement as they were prior to amendment and if it is so reported within ten days after the effective date of this amendment. Any such report shall include the price, the quantity sold or bought, when delivery was made or is to be made and a sales or purchase number by which such contract or agreement can be identified. No such report to such confidential employee need include the name of the person purchasing from the miller nor

the name of the person selling to the miller, but such miller shall when requested report such names to the Secretary or any duly authorized agent of the Secretary, such names to be treated as confidential. Any report, containing such information, heretofore made to the Control Committee or any agent or agency of the Secretary shall be deemed a compliance with this proviso.

SEC. 7. During the effective period, no contracting miller shall mill rice which has not been purchased by such miller. Within the meaning of this Agreement, rice produced by the members of a cooperative association shall be deemed to have been purchased by such cooperative association, and a cooperative association shall be deemed to mean the Arkansas Rice Growers Cooperative Association and any other bona fide cooperative association of producers which mills, in a mill or mills operated by it, rice received by it from its members, which is obligated to receive and sell its members' rice and which shall have received the prior approval of the Secretary.

SEC. 8. The contracting millers admit that all transactions to be regulated by this Agreement are transactions in interstate and/or foreign commerce or transactions in intrastate commerce which are so inextricably intermingled with such interstate and/or foreign transactions that such interstate and/or foreign transactions cannot be effectively regulated in the manner provided in this Agreement, without regulating such intrastate transactions in the manner provided in this Agreement, and that the contracting millers are engaged in the handling of rice in the current of interstate and/or foreign commerce.

SEC. 9. The contracting millers severally authorize and empower the Secretary to inspect any and all rough rice in their possession or under their control.

ARTICLE XVI—LICENSING

The contracting millers hereby apply for and consent to licensing by the Secretary. Such license shall be in accordance with applicable regulations heretofore and hereafter prescribed by the Secretary and approved by the President of the United States of America and shall be subject to the rights and powers of the Secretary from time to time to modify or amend any license issued pursuant to the foregoing.

ARTICLE XVII—EFFECTIVE TIME

SECTION 1. This Agreement shall become effective at such time as the Secretary may declare above his signature attached hereto, and this Agreement shall continue in force until terminated as follows:

(*a*) The Secretary may at any time terminate this Agreement as to all parties thereto, by giving at least one day's notice by means of a press release or in any other manner which the Secretary may determine.

(*b*) The Secretary may at any time terminate this Agreement as to any party signatory thereto, by giving at least one day's notice by depositing the same in the mail and addressed to such party at his last known address.

(*c*) The Secretary shall terminate this Agreement as of August 1 of 1935 or any later year by giving notice in the same manner as provided in paragraph (*a*) above upon the request, prior to March 1, of any such calendar year, of contracting millers who milled or exported during the three completed crop years next preceding any such request seventy-five (75) percent of the total rough rice milled or exported by millers during said three crop years.

(*d*) The Secretary shall terminate this Agreement by giving notice in the same manner as provided in paragraph (*a*) above upon the request of contracting millers who milled or exported during the three completed crop years next preceding any such request, 75% of the total rough rice milled or exported by millers during said three crop years, provided, that upon such termination the provisions of articles III and VIII hereof and provisions supplemental to carrying out said articles shall continue in effect until the end of the current crop year. (Such supplemental provisions to be as specified in the Secretary's notice of termination.)

(*e*) This Agreement shall in any event terminate whenever the provisions of the Act authorizing it cease to be in effect.

SEC. 2. Notwithstanding a termination of this Agreement and provided that the Secretary shall so direct, the numbers of the Millers Committee at the time of such termination shall, under the control of and subject to supervision and approval by the Secretary, as trustees receive all property held or controlled by the Millers Committee at the time of such termination, collect all sums owing to the Millers Committee and liquidate all property held or controlled by the Millers Committee and after paying all outstanding obligations shall distribute equitably in accordance with the provisions of this Agreement to those entitled thereto or

use in accordance with the purposes of this Agreement all remaining funds held by them as such trustees; *Provided, however*, That the Secretary may remove such trustees, or any of them, and appoint their successors or a successor.

Article XVIII—Duration of Immunities

The benefits, privileges, and immunities conferred by virtue of this Agreement shall cease upon its termination, except with respect to acts done prior thereto; and the benefits, privileges and immunities conferred by this Agreement upon any party signatory hereto shall cease upon its termination as to such party except with respect to acts done prior thereto.

Article XIX—Counterparts

This Agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary all such counterparts shall constitute, when taken together, one and the same instrument as if all such signatures were contained in one original.

Article XX—Additional Parties

After this Agreement first takes effect any miller may become a party to this Agreement, if a counterpart thereof is executed by him and by the Secretary. This Agreement shall take effect as to such new contracting party at such time as the Secretary may declare above his signature attached to such counterpart, and the benefits, privileges, and immunities conferred by this Agreement shall then be effective as to such new contracting party.

Article XXI—Agents

The Secretary may by designation in writing, name any person, including any officer or employee of the Government, or name any Bureau or Division in the Department of Agriculture, to act as his agent or agency in connection with any of the provisions of this Agreement.

Article XXII—Amendments

Any amendment to this Agreement shall become effective at the date designated by the Secretary upon approval of such amendment by the Secretary, provided that such amendment shall have first been approved by Millers who milled or exported more than one-half of the total rough rice milled and exported during the last three preceding crop years.

Article XXIII—Signatures of Parties

In witness whereof, the contracting parties, acting under the provisions of the Agricultural Adjustment Act, as amended, for the purposes and subject to the limitations therein contained, and not otherwise, have hereunto set their respective hands and seals.

Whereas, it is provided by section 8 of the Act as follows:

In order to effectuate the declared policy, the Secretary of Agriculture shall have power—(2) After due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity, or product thereof, in the current of or in competition with, or so as to burden, obstruct, or in any way affect, interstate or foreign commerce. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful; *Provided*, That no such agreement shall remain in force after the termination of this Act.

and—

Whereas, due notice and opportunity for hearing to interested parties has been given pursuant to the provisions of the Act, and the regulations issued thereunder; and

Whereas, the Secretary finds (1) that the contracting millers are engaged in the marketing, distribution and other handling of rice and/or products thereof in the current of and in competition with, and so as to burden, obstruct, and affect interstate and foreign commerce; and (2) that the marketing, distribution and other handling of rice and/or products thereof in intrastate commerce is inextricably intermingled with the marketing, distribution and other handling of rice in interstate and foreign commerce; and

Whereas, it appears, after due consideration, that this Agreement will tend to effectuate the policy of Congress declared in section 2 of the Act, as hereinbefore in this Agreement set forth.

SEC. 2. This amendment of the Marketing Agreement shall become effective, as to all parties signatory to the Marketing Agreement, at such time as the Secretary may declare above his signature attached hereto.

SEC. 3. The provisions of the Marketing Agreement except as amended by this Amendment shall continue to be in full force and effect.

SEC. 4. Any and all obligations which shall have arisen prior to the effective date of this Amendment, or which may thereafter arise in connection therewith, by virtue of or pursuant to the Marketing Agreement and any breaches of the Marketing Agreement which may have occurred prior to the effective date of this Amendment, shall be deemed not to be released, waived, affected or terminated by reason of this Amendment, except as expressly provided herein.

SEC. 5. The undersigned millers hereby agree to perform all the terms and conditions of the Marketing Agreement as so amended.

In witness whereof, the undersigned millers, acting under the provisions of the Agricultural Adjustment Act, as amended, for the purposes and subject to the limitations therein contained, and not otherwise, have hereunto set their respective hands and seals.

Adolph Pfeffer Rice Milling Co., by Adolph Pfeffer, manager; American Rice Milling Co., by C. J. Freeland, vice president; Arkansas Rice Growers Cooperative Assn., by R. E. Short, vice president; Arkansas State Rice Milling Co., by Frank A. Godchaux Jr., vice president; Beaumont Rice Mills, by J. E. Broussard, president; El Campo Rice Mills, by J. E. Broussard, president; Farmers Rice Milling Co., Inc., by Carl Himel, manager; Kaplan Rice Mill Inc., by T. P. White, vice president; La. State Rice Milling Co. Inc., by Frank A. Godchaux Jr., vice president; Levy Rice Milling Co. Inc., by Jake Levy; Mermentau Rice Mill Co. Inc., by P. M. Lyons, president; Noble Trotter Rice Milling Co. Inc., by J. H. Trotter, secretary-treasurer; Pritchard Rice Milling Co., by P. F. Pritchard, vice president; Republic Rice Mills Inc., by Guy Landry, secretary-treasurer; Rickert Rice Mills Inc., by Fred W. Rickert, president; Smith Rice Mill Co., by Geo. Smith, president; Steinhagen Rice Milling Co., by E. H. Steinhagen, secretary-treasurer; Texas Rice Milling Co., by R. Hoffpauir, president; Tyrrell Rice Milling Co., by V. C. Clark, secretary-manager; United Rice Milling Products Inc. by E. V. Schafer, president; Walton Rice Mill, Inc. by C. R. Walton, president.

Whereas, it appears after due consideration, that the Marketing Agreement, as amended, will tend to effectuate the policy of Congress set forth in Section 2 of the Agricultural Adjustment Act, as amended; and

Whereas, the Secretary finds that this Amendment has been approved by millers, as defined in the Marketing Agreement, who are

parties signatory to the Marketing Agreement and who milled or exported more than one-half of the total rough rice milled and exported during the last three preceding crop years;

Now, therefore, the Secretary of Agriculture, acting under the provisions of the Agricultural Adjustment Act, as amended, for the purposes and within the limitations therein contained, and not otherwise, does hereby execute this Amendment of the Marketing Agreement for Southern Rice Milling Industry, in duplicate, under his hand and the official seal of the Department of Agriculture, in the City of Washington, District of Columbia, on the 20th day of July, 1934, and pursuant to the provisions hereof, declares this Amendment, and said Marketing Agreement as amended by this Amendment, to be effective on and after 12:01 A.M., eastern standard time, July 21, 1934.

H A Wallace

Secretary of Agriculture.

SCHEDULE 1

Premiums

Premium percentages, as named in this Schedule are to be applied to the base price for Prime No. 1 A Milling quality rough rice as such may be named, for the several varieties, by the Secretary.

The price for rough rice on which the estimated yield of HEAD RICE is above the yield named as the minimum requirement for the designation PRIME, shall be a premium for one-half of one percent for each full pound, by which the estimate exceeds the yield required for the designation PRIME. The price for rough rice on which the estimate for TOTAL YIELD is above the yield named as the minimum requirement for the designation "A" shall be a premium of one-half of one percent for each full two pounds by which the estimate exceeds the yield required for the designation "A". When the estimated yield of HEAD RICE is above the requirement for the designation PRIME by one full pound, or more, and the estimate for TOTAL YIELD is above the requirement for the designation "A" by two full pounds, or more, the accumulated premiums shall apply.

Discounts

Discounts, as named in this Schedule, are to be applied to the base price for Prime No. 1 A Milling quality rough rice as such may be named, for the several varieties, by the Secretary.

Discounts are to apply for each grade factor in the Standards and when rough rice is graded below No. 1 for two or more grade factors, or lower than No. 1 for one or more grade factors and lower than the highest Special Designation for a grade, or lower than the highest designation for two or more Special Grades, the accumulated discounts shall apply, subject to such exceptions as are hereinafter noted.

Table A.—*Discounts for rough rice*

For the Grade Factor

TOTAL DAMAGED KERNELS

United States Grade	Percentage allowed for grade	Discount from Base price
		Percent
No. 1	2%	0
No. 2	2.1% to 4% inc.	3
No. 3	4.1% to 7% inc.	7
No. 4	7.1% to 10% inc.	10
No. 5	10.1% to 12.5% inc.	15
No. 5	12.6% to 15% inc.	15
No. 6	15.1% to 17.5% inc.	20
No. 6	17.6% to 20% inc.	20

The discount for rough rice containing over 20% of TOTAL DAMAGED KERNELS shall be 20% of the base price, plus one-half of one percent of such price, for each full one percent of TOTAL DAMAGED KERNELS in excess of 20%.

A discount may be claimed for either TOTAL DAMAGED KERNELS or HEAT DAMAGED KERNELS, however, discounts for both factors may not be claimed.

TABLE B.—*Discounts for rough rice*

For the Grade Factor

HEAT-DAMAGED KERNELS

United States Grade	Percentage allowed for grade	Discount from base price
		Per cent
No. 1	Trace	2
No. 2	0.02%	4
No. 3	0.04%	8
No. 4	0.06%	10
No. 5	0.08%	13.5
No. 6	0.1%	17.5

The discount for rough rice containing over 0.1% of HEAT DAMAGED KERNELS shall be 17.5% of the base price, plus:

For such excess:	The additional discount shall be:
From 0.2% to 1% inc.	1% of such base price for each 0.1% of Heat Damaged Kernels.
From 1.1% to 5% inc.	1% of such base price for each 0.5% of Heat Damaged Kernels.
From 5.1% upward	1% of such base price for each 1% of Heat Damaged Kernels.

A discount may not be claimed for HEAT DAMAGED KERNELS and TOTAL DAMAGED KERNELS, or for HEAT DAMAGED KERNELS and MUSTY ODOR, or for HEAT DAMAGED KERNELS and STAIN.

TABLE C–1.—*Discounts for rough rice*

For the Grade Factor

RED RICE

For the varieties Edith, Honduras, Fortuna, Carolina, American Patna, and No. 2702 (Nira)[1]

United States Grade	Percentage allowed for grade	Discount from base price
		Per cent
No. 1	To 0.5%	0
No. 2	0.6% to 1.5% inc.	1
No. 2	1.6% to 2.5% inc.	2
No. 3	2.6% to 3.8% inc.	5
No. 3	3.9% to 5% inc.	7
No. 4	5.1% to 7.5% inc.	9
No. 4	7.6% to 10% inc.	13
No. 5	10.1% to 12.5% inc.	15
No. 5	12.6% to 15% inc.	17
No. 6	15.1% to 17.5% inc.	19
No. 6	17.6% to 20% inc.	25

[1] United States Standards of Grade have not been formulated for the rough rice variety No. 2702 (Nira).

The discount for rough rice, of the above varieties, containing over 20% RED RICE shall be 25% of the base price, plus one-half of 1 percent of such price, for each full 1 percent of RED RICE in excess of 20%.

TABLE C–2.—*Discounts for rough rice*

For the Grade Factor

RED RICE

For the varieties, Lady Wright, Early Wright, Shomed, Blue Rose, Early Prolific and Japan

United States Grade	Percentage allowed for grade	Discount from base price
		Percent
No. 1	To 0.5%	0
No. 2	0.6% to 1.5% inc.	1
No. 2	1.6% to 2.5% inc.	2
No. 3	2.6% to 3.8% inc.	3
No. 3	3.9% to 5% inc.	5
No. 4	5.1% to 7.5% inc.	6
No. 4	7.6% to 10% inc.	8
No. 5	10.1% to 12.5% inc.	10
No. 5	12.6% to 15% inc.	12
No. 6	15.1% to 17.5% inc.	14
No. 6	17.6% to 20% inc.	18

The discount for rough rice, of the above-named varieties, containing over 20% RED RICE shall be 18% of the base price, plus one-half of one percent of such price, for each full one percent of RED RICE in excess of 20%.

TABLE D.—*Discounts for rough rice*

For the Grade Factor

CEREAL GRAINS

United States Grade	Percentage allowed for grade	Discount from base price
		Percent
No. 1	Trace	0
No. 2	0.02%	1
No. 3	0.04%	2
No. 4	0.06%	3
No. 5	0.08%	4
No. 6	0.1%	5

The discount for rough rice containing CEREAL GRAINS in excess of 0.1% shall be 5% of the base price, plus one percent of such price for each 0.1% of CEREAL GRAINS in excess of 0.1%.

A discount may be claimed for either CEREAL GRAINS or for RICE OF OTHER CLASSES, however, discounts may not be claimed for both factors.

TABLE E.—*Discounts for rough rice*

For the Grade Factor

RICE OF OTHER CLASSES

United States Grade	Percentage allowed for grade	Discount from base price
		Per cent
No. 1	1%	0
No. 2	2%	2
No. 3	4%	5
No. 4	6%	8
No. 5	10%	12

The discount for rough rice containing RICE OF OTHER CLASSES in excess of 10% shall be 12% of the base price, plus one-half of one percent of such price for each full one percent of RICE OF OTHER CLASSES in excess of 10%.

A discount may be claimed either for RICE OF OTHER CLASSES or CEREAL GRAINS; however discounts may not be claimed for both factors.

TABLE F–1.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the variety, Honduras

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
Prime	70 lbs	0
Good	69 lbs	1
Good	68 lbs	2
Good	67 lbs	3
Good	66 lbs	4
Good	65 lbs	5
Medium	62–64 lbs. inc	7
Medium	60–61 lbs. inc	9
Fair	57–59 lbs. inc	11
Fair	55–56 lbs. inc	13
Ordinary	52–54 lbs. inc	15
Ordinary	50–51 lbs. inc	17

The discount for Honduras rough rice, with an estimated yield of HEAD RICE below 50 pounds, shall be 17% of the base price, plus one percent of such price for each full pound of HEAD RICE below 50 pounds.

If Honduras rough rice is subject to discount for MOISTURE, then the discount for HEAD RICE yield may not exceed 20%.

TABLE F–2.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the varieties, Fortuna, Carolina, and No. 2702 (Nira)*

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
Prime	75 lbs	0
Good	74 lbs	5
Good	73 lbs	5
Good	72 lbs	5
Good	71 lbs	5
Good	70 lbs	5
Medium	67–69 lbs. inc	10
Medium	65–66 lbs. inc	10
Fair	62–64 lbs. inc	15
Fair	60–61 lbs. inc	15
Ordinary	57–59 lbs. inc	20
Ordinary	55–56 lbs. inc	20

* United States Standards of grade have not been formulated for the rough rice variety No. 2702 (Nira).

The discount for rough rice, of the above named varieties, with an estimated yield of HEAD RICE below 55 pounds, shall be 20% of the base price, plus one percent of such price for each full pound of HEAD RICE below 55 pounds.

If rough rice of the above named varieties is subject to discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 20%.

TABLE F–3.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the variety, Edith

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
Prime	85 lbs	0
Good	84 lbs	5
Good	83 lbs	5
Good	82 lbs	5
Good	81 lbs	5
Good	80 lbs	5
Medium	77–79 lbs. inc	10
Medium	75–76 lbs. inc	10
Fair	72–74 lbs. inc	15
Fair	70–71 lbs. inc	15
Ordinary	67–69 lbs. inc	20
Ordinary	65–66 lbs. inc	20

The discount for Edith rough rice, with an estimated yield of HEAD RICE below 65 pounds, shall be 20% of the base price, plus one percent of such price for each full pound of HEAD RICE below 65

pounds. If Edith rough rice is subject to a discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 20%.

TABLE F–4.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the variety, American Patna

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Percent
Prime	75 lbs	0
Good	74 lbs	1
Good	73 lbs	2
Good	72 lbs	3
Good	71 lbs	4
Good	70 lbs	5
Medium	67–69 lbs. inc	7
Medium	65–66 lbs. inc	9
Fair	62–64 lbs. inc	11
Fair	60–61 lbs. inc	13
Ordinary	57–59 lbs. inc	15
Ordinary	55–56 lbs. inc	17

The discount for American Patna rough rice, with an estimated yield of HEAD RICE below 55 pounds, shall be 17% of the base price, plus 1% of such price for each full pound of HEAD RICE below 55 pounds. If American Patna rough rice is subject to a discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 20%.

TABLE F–5.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the varieties, Blue Rose and Japan

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Percent
Prime	95 lbs	0
Good	94 lbs	1
Good	93 lbs	2
Good	92 lbs	3
Good	90–91 lbs. inc	4
Medium	87–89 lbs. inc	6
Medium	85–86 lbs. inc	7
Fair	82–84 lbs. inc	8
Fair	80–81 lbs. inc	9
Ordinary	77–79 lbs. inc	10
Ordinary	75–76 lbs. inc	11

The discount for rough rice of the above named varieties, with an estimated yield of HEAD RICE below 75 pounds, shall be 11% of

the base price, plus 1% of such price for each full pound of HEAD RICE below 75 pounds.

If rough rice of the above-named varieties is subject to a discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 15%.

TABLE F–6.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the varieties, Early Prolific, Shomed, and Louisiana Pearl

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Percent
Prime	90 lbs	0
Good	89 lbs	1
Good	88 lbs	2
Good	87 lbs	3
Good	85–86 lbs. inc	4
Medium	82–84 lbs. inc	7
Medium	80–81 lbs. inc	7
Fair	77–79 lbs. inc	9
Fair	75–76 lbs. inc	9
Ordinary	72–74 lbs. inc	11
Ordinary	70–71 lbs. inc	11

The discount for rough rice of the above-named varieties, with an estimated yield of HEAD RICE below 70 pounds, shall be 11% of the base price, plus one percent of such price for each full pound of HEAD RICE below 70 pounds.

If rough rice of the above-named varieties is subject to discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 15%.

TABLE F–7.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the varieties, Lady Wright and Early Wright

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Percent
Prime	90 lbs	0
Good	89 lbs	1
Good	88 lbs	2
Good	87 lbs	3
Good	85–86 lbs. inc	4
Medium	82–84 lbs. inc	7
Medium	80–81 lbs. inc	7
Fair	77–79 lbs. inc	9
Fair	75–76 lbs. inc	9
Ordinary	72–74 lbs. inc	11
Ordinary	70–71 lbs. inc	11

The discount for rough rice of the above-named varieties, with an estimated yield of HEAD RICE below 70 pounds, shall be 11% of the base price, plus one percent of such price, for each full pound of HEAD RICE below 70 pounds.

If rough rice of the above-named varieties is subject to discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 15 %

TABLE G–1.—*Discounts for Rough Rice*

For the Grade Factor

MILLING QUALITY (TOTAL YIELD)

For the varieties, Edith, Louisiana Pearl, Japan, Shomed, Blue Rose

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
A	110 lbs	0
B	108 lbs	1.5
C	106 lbs	3
D	104 lbs	4.5
E	102 lbs	6

The discount for rough rice, of the above-named varieties, with an estimated TOTAL YIELD of less than 102 pounds, shall be 6% of the base price, plus one-half of one percent of such price for each full pound of TOTAL YIELD below 102 pounds.

TABLE G–2.—*Discounts for Rough Rice*

For the Grade Factor

MILLING QUALITY (TOTAL YIELD)

For the varieties, Honduras, Fortuna, Carolina, Lady Wright, Early Wright, American Patna, Early Prolific, and No. 2702 (Nira) [1]

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
A	108 lbs	0
B	106 lbs	1.5
C	104 lbs	3
D	102 lbs	4.5
E	100 lbs	6

[1] United States Standards of grade have not been formulated for the rough rice variety No. 2702 (Nira).

The discount for rough rice of the above-named varieties, with an estimated TOTAL YIELD of less than 100 pounds, shall be 6% of the base price, plus one-half of one percent of such price for each full pound of TOTAL YIELD below 100 pounds.

TABLE H.—*Discounts for rough rice*

For the Grade Factor

STAIN

The discount for STAINED rough rice shall be 3% of the base price, except that no discount may be claimed for STAINED rough rice if a discount is claimed for the grade factors MOISTURE, or MUDDY KERNELS, or MUD LUMPS, or HEAT DAMAGED KERNELS, or MUSTY ODOR.

TABLE I.—*Discounts for rough rice*

For the Grade Factor

MUSTY ODOR

The discount for MUSTY rough rice shall be 5% of the base price, except that no discount may be claimed for MUSTY rough rice if a discount is claimed for the grade factors MOISTURE or HEAT DAMAGED KERNELS or STAIN.

TABLE J.—*Discounts for rough rice*

For the Grade Factor

MOISTURE

United States Grade (Special Designation)	Per cent allowed for grade	Discount from base price
		Per cent
Normal	14%	0
Damp	14.5%	0
Damp	14.6% to 15% inc	3
Damp	15.1% to 15.5% inc	6
Wet	15.6% to 16% inc	8
Wet	16.1% to 17% inc	12

The discount for rough rice containing MOISTURE in excess of 17% shall be 12% of the base price, plus one percent of such price for each full one-half of one percent of MOISTURE in excess of 17%.

No discount may be claimed for MOISTURE if a discount is claimed for MUSTY ODOR or HEAT DAMAGED KERNELS or STAIN.

TABLE K.—*Discounts for rough rice*

For the Grade Factor

WEED SEEDS (SEPARABLE)

United States Grade (Special Designation)	Percentage allowed for grade	Discount from base price
		Per cent
Not Seedy	0.1%	0
Slightly Seedy	0.5%	0
Seedy	2.0%	1

The discount for rough rice containing over 2% of WEED and/or GRASS SEEDS (Separable) shall be 1% of the base price, plus one-half of one percent of such price for each full one percent of WEED and/or GRASS SEEDS in excess of 2%.

TABLE L.—*Discounts for rough rice*

For the Grade Factor

WEED SEEDS (INSEPARABLE)

United States Grade (Special Designation)	Percentage allowed for grade	Discount from base price
		Per cent
Not Seedy	0.1%	0
Slightly Seedy	0.5%	5
Seedy	2.0%	12

The discount for rough rice containing over 2% of WEED and/or GRASS SEEDS (Inseparable) shall be 12% of the base price plus one percent of such price for each full one-half of one percent of such inseparable seeds in excess of 2%.

TABLE M.—*Discounts for rough rice*

For the Grade Factor

CHALKY KERNELS

United States Grade (Special Designation)	Percentage allowed for grade	Discount from base price
		Per cent
Not Chalky	1.5%	0
Not Chalky	1.6% to 3% inc	1
Slightly Chalky	3.1% to 4.5% inc	2
Slightly Chalky	4.6% to 6% inc	3
Chalky	6.1% to 9% inc	4
Chalky	9.1% to 12% inc	5

The discount for rough rice containing over 12% CHALKY KERNELS shall be 5% of the base price, plus one-half of one percent of such price for each full one percent of CHALKY KERNELS in excess of 12%.

TABLE N.—*Discounts for rough rice*

For the Grade Factor

MUDDY KERNELS

United States Grade (Special Designation)	Percentage allowed for grade	Discount from base price
		Per cent
Clear	1%	0
Slightly Muddy	2%	3
Muddy	5%	8

The discount for rough rice containing in excess of 5% MUDDY KERNELS shall be 8% of the base price, plus 0.1% of such price for each full one percent of MUDDY KERNELS in excess of 5%.

TABLE O.—*Discounts for rough rice*

For the Grade Factor

MUD LUMPS

United States Grade (Special Designation)	Percentage allowed for grade	Discount from base price
		Percent
Clear	0.1%	0
Slightly Muddy	0.5%	3
Muddy	2.0%	8

The discount for rough rice containing in excess of 2% MUD LUMPS shall be 8% of the base price, plus 0.1% of such price for each 0.1% of MUD LUMPS in excess of 2%.

AMENDMENT OF AMENDED LICENSE FOR SOUTHERN RICE MILLING INDUSTRY

ARTICLE I

Whereas, it is provided by section 8 of the Agricultural Adjustment Act, approved May 12, 1933, as amended (hereinafter referred to as the "Act"), as follows:

SEC. 8. In order to effectuate the declared policy, the Secretary of Agriculture shall have power—

(3) To issue licenses permitting processors, associations of producers, and others to engage in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof, or any competing commodity or product thereof. Such licenses shall be subject to such terms and conditions, not in conflict with existing Acts of Congress or regulations pursuant thereto, as may be necessary to eliminate unfair practices or charges that prevent or tend to prevent the effectuation of the declared policy and the restoration of normal economic conditions in the marketing of such commodities or products and the financing thereof * * *

(4) To require any licensee under this section to furnish such reports as to quantities of agricultural commodities or products thereof bought and sold and the prices thereof, and as to trade practices and charges, and to keep such systems of accounts, as may be necessary for the purpose of part 2 of this title;

and

Whereas, The Secretary finds that the marketing, distribution, and other handling of rice and products thereof are entirely in the current of interstate and/or foreign commerce because the said marketing, distribution, and other handling are partly interstate and/or foreign commerce and partly intrastate commerce and so inextricably intermingled that said interstate and/or foreign commerce portion cannot be effectively regulated or licensed without licensing that portion which is intrastate commerce; and

Whereas, the Secretary of Agriculture of the United States of America (hereinafter referred to as the "Secretary of Agriculture"), acting under the provisions of the Act, for the purposes and within the limitations therein contained, and pursuant to the regulations issued thereunder has on October 13, 1933 issued a License for Southern Rice Milling Industry and has on December 8, 1933 and January 6, 1934 duly amended the same (said License, as amended, being hereinafter referred to as the "License"); and

Whereas, the Secretary of Agriculture has determined to amend the terms and conditions of the License;

Now, therefore, the Secretary of Agriculture, acting under the authority vested in him as aforesaid;

Hereby licenses each and every miller to engage in the business of marketing, distributing and otherwise handling rice, subject to the following terms and conditions, and hereby amends the terms and conditions of the License (except the recitals thereof, execution thereof and the "*In witness whereof*" paragraph immediately preceding his signature) to read as set forth herein:

ARTICLE II—DEFINITIONS

Section 1. As used in this Amended License—

(1) The term "Secretary" means the Secretary of Agriculture of the United States of America.

(2) The term "Act" means the Agricultural Adjustment Act, approved May 12, 1933, as amended.

(3) The term "person" means individual, partnership, corporation, association, or any other business unit.

(4) The term "rough rice" means rice from which the hull has not been removed.

(5) The term "clean rice" means rice which has been converted into marketable and edible form.

(6) The term "barrel" means a unit of 162 pounds of rough rice.

(7) The term "bushel" means a unit of 45 pounds of rough rice.

(8) The term "pocket" means a container holding 100 pounds net of clean rice.

(9) The term "packaged rice" means clean rice, packed in any type of container, having a net weight of 5 pounds or less.

(10) The term "sack" or "bag" means every container of unknown, irregular or random weight; "stack" or "lump sum" means without respect to quantity, quality or condition; and "round" means purchasing without respect to grade.

(11) The term "customary point of delivery" means either the place at which the rice is actually produced, the public warehouse nearest the place at which the rice is actually produced, or the shipping point nearest the place at which the rice is actually produced, at the option of the producer.

(12) The term "miller" means any person milling rice grown in Louisiana, Arkansas or Texas; or milling rice in Texas, Tennessee, Arkansas or Louisiana; or exporting rough rice grown in Louisiana, Arkansas or Texas; or marketing such rice milled by himself; or any affiliate or subsidiary milling or marketing rice grown in Louisiana, Arkansas or Texas.

(13) The term "licensee" means a miller as defined above.

(14) The term "importer" means any person within the territorial jurisdiction of the Act who first handles for sale or sells within the territorial jurisdiction of the Act any rice produced without the territorial jurisdiction of the Act, except as to rice imported and under bond for re-exportation.

(15) The term "producer" means any person engaged in Louisiana, Arkansas or Texas, in producing rough rice for sale.

(16) The term "Millers Advisory Council" means the Millers Advisory Council established pursuant to article XI of the Marketing Agreement, a copy of which article is set forth in Exhibit A of this Amended License.

(17) The term "Millers Committee" means the Committee established and/or continued pursuant to article XII of the Marketing Agreement, a copy of which article is set forth in Exhibit B of this Amended License.

(18) The term "Producers Committee" means the Producers Committee established pursuant to article XIV of the Marketing Agreement, a copy of which article is set forth in Exhibit C of this Amended License.

(19) The term "Rice Section" means the Rice Section of the Agricultural Adjustment Administration.

(20) The term "purchase" includes a contract of purchase and a contract to purchase.

(21) The term "sell" or "sale" includes a contract to sell and a contract of sale.

(22) The term "base price" means a minimum price stated in, or fixed by the Secretary pursuant to section 2 of article III of this Amended License.

(23) The term "Marketing Fund" means a Marketing Fund referred to, and/or provided for, in article VII of the Marketing Agreement and/or referred to in article VII of this Amended License.

(24) The term "crop year" means the period from July 1 to June 30, both inclusive.

(25) The term "effective period" means the period from the effective date of this Amended License during which it shall continue in force.

(26) The term "books and records" means books, records, accounts, contracts, documents, memoranda, papers, correspondence, or other data.

(27) The term "subsidiary" means any person, of or over whom a miller or an affiliate of a miller has, or several millers collectively have, either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner.

(28) The term "affiliate" means any person (and/or any subsidiary thereof) who has, either directly or indirectly, actual or legal control of or over a miller, whether by stock ownership or in any other manner.

(29) The term "Marketing Agreement" means the Marketing Agreement for Southern Rice Milling Industry executed by the Secretary on March 5, 1934, and effective on March 6, 1934, as amended by Amendment dated July 20, 1934, effective July 21, 1934.

ARTICLE III—MINIMUM PRICES FOR ROUGH RICE

SECTION 1. Rough rice shall be purchased and sold in units of barrels or bushels and no miller shall purchase or sell rough rice round or by sack, bag, stack or lump sum.

SEC. 2. The minimum prices for number one grade prime A milling quality of the following varieties of rough rice shall be, until and except as changed by the Secretary:

Variety:	*Per barrel of 162 pounds*
Early Prolific	$2.75
Japan	2.85
Louisiana Pearl	3.00
Blue Rose	3.15
Lady Wright	3.15
Early Wright	3.15
Edith	3.40
Stormproof	3.40
Fortuna	3.45
No. 2702 (Nira)	3.45
Rexoro	3.50

The Secretary may change one or more of said minimum prices at any time and from time to time during the effective period. The Secretary may fix minimum prices for said grade of other varieties of

rough rice at any time and from time to time during the effective period. Any minimum price for such grade of any variety of rough rice set forth in this section or fixed by the Secretary pursuant to this section shall be deemed to be the "base price" for such variety.

SEC. 3. The minimum prices for other grades of each variety of rough rice shall be the base price for such variety plus the premiums or minus the discounts set forth in the schedule which is annexed hereto, made a part hereof and marked "Schedule 1." Said schedule, or any part thereof, may at any time and from time to time be changed by the Secretary.

SEC. 4. During the effective period, the net price paid or received by any miller for rough rice shall be not less than, and each miller purchasing or receiving rough rice shall be obligated to pay therefor not less than, the minimum price for the corresponding variety and grade, determined pursuant to this article and Schedule 1, prevailing at the time of the purchase of such rough rice by or from such miller; *Provided, however*, That payment in accordance with the provisions of article VIII of the Marketing Agreement, for rough rice of the crop of 1934 or any later year, received by a miller on or after July 1, 1934, shall be deemed a compliance with this section. Such minimum prices are for delivery at customary points of delivery, as defined in article II.

SEC. 5. In the event of a controversy with regard to the proper variety or grade of any rough rice, said rice shall be graded by a Federal or Federal-State Grading Office. Millers shall abide by the certificate of grade and variety issued by such Grading Office and the expense of such sampling and grading shall be adjusted by agreement between the parties to such controversy.

SEC. 6. Nothing in this Amended License and nothing done pursuant to section 7 shall be so construed as to give to any miller who shall have by agreement purchased rough rice as being of a certain variety and grade at a price above the minimum price for such variety and grade the privilege of taking any part of such rough rice which may be of lower grade at a price lower than such agreed price, less the discount applicable to such lower grade of rough rice.

SEC. 7. The Secretary may at any time during the effective period prescribe that there shall be compulsory grading of rough rice and name a governmental agency by which such grading shall be done. Thereafter during the effective period, no miller shall accept or purchase any rough rice which is not accompanied by a certificate or certificates as to the grade or grades of such rough rice, issued by the person or persons and as the Secretary shall have prescribed, nor except upon the basis of the grade or grades of such rough rice indicated in such certificate or certificates.

SEC. 8. The Secretary may at any time during the effective period prescribe that rough rice shall be weighed by a licensed and/or bonded weigher before it is accepted by a miller and that rough rice shall be purchased by a miller on the basis of the weight certified by such weigher. Thereafter, during the effective period, no miller shall accept delivery of any rough rice which shall not have been weighed by a licensed and/or bonded weigher, as the Secretary shall have prescribed, nor accept or purchase rough rice except on the basis of weight certified by such weigher.

SEC. 9. No miller shall purchase rough rice from any person other than the producer thereof, or such producer's successor in interest by operation of law, except upon evidence submitted by the seller satisfactory to the Millers Committee either (1) that such producer or such successor has received therefor not less than the minimum price prevailing at the time it was sold by such producer or such successor, or (2) that such producer or such successor and the Secretary have received payments in connection therewith in accordance with the provisions of article VIII of the Marketing Agreement.

SEC. 10. Any purchase by, or for the account of, a miller, whether from a person as the seller or at or under any sale to enforce a lien or a judicial sale or otherwise, shall be deemed a purchase by such miller.

ARTICLE IV—METHOD OF DETERMINING MINIMUM SALE PRICES FOR CLEAN RICE

SECTION 1. To effectuate the purposes of this Amended License and to aid in the carrying out and enforcement of the provisions hereof, no miller shall offer for sale, sell or deliver for domestic consumption any quantity of clean rice for an amount per pocket less than the sum of

(*a*) the minimum price, determined pursuant to article III and Schedule 1, for the grade, variety and quantity of the rough rice from which such clean rice was milled,

(*b*) the conversion charge for such quantity of rough rice and prevailing at the time of such offer, sale or delivery, and

(*c*) the published car lot rail rate for transporting such rough rice from the customary point of delivery to the miller's mill, and

(*d*) the administrative assessment for such quantity of rough rice and prevailing when such rice was milled;

Provided, however, That any miller may offer clean rice for sale, for export to foreign countries, on the foregoing basis less a maximum discount of 20 cents per barrel of such rough rice and may, if the rice is actually exported, sell or deliver clean rice for export to foreign countries on said basis less said maximum discount. The determination of the Millers Committee as to whether or not clean rice is actually exported shall be final and conclusive, subject to appeal to the Secretary. Said minimum amounts, below which this section provides that clean rice shall not be offered for sale, sold, or delivered by a miller, apply f.o.b. the miller's mill.

SEC. 2. The conversion charge per barrel of rough rice shall, until and except as changed by the Secretary, be an amount equal to the sum of (*a*) seventy (70) cents per barrel of rough rice, (*b*) nine (9) cents per barrel of rough rice if standard one-hundred pound single packages are used for the clean rice, and (*c*) if cotton or paper inner linings or regular burlap outer slips are used for the clean rice, an additional five (5) cents per barrel of rough rice, or (*d*) if any other type of container is used for the clean rice, the actual invoice price for the container used. The Secretary may at any time and from time to time during the effective period, increase or decrease the amount of, and/or change the basis of computation of, the conversion charge.

SEC. 3. The provisions of this article are without prejudice to the right of any miller who asserts that such conversion charge is in excess of or below the conversion charge necessary to accomplish the purposes set forth in section 1 of this article, to a hearing on the question of a change in such conversion charge, in accordance with applicable General Regulations, Agricultural Adjustment Administration.

SEC. 4. The provisions of this article shall not be applicable to any sales to any public unemployment relief agency (whether local, State or Federal), to any private unemployment relief agency cooperating with or accredited by any public unemployment relief agency, to any charitable institution or agency, to any hospital in connection with its charitable operations or to any government agency (whether local, State or Federal) when such sales are upon competitive bids; *Provided, however*, That the Millers Committee may from time to time, with the prior approval of the Secretary, prescribe proper safeguards to prevent the reintroduction into the channels of trade of rice so sold.

SEC. 5. No miller, or its officers, employees or agents shall employ any method or device whereby clean rice, is sold or offered for sale or delivered for less than any amounts applicable thereto pursuant to this article, whether by discount, rebate, redeemable certificate, stamps and/or books, free services or merchandise, credit for returns, loans or credit outside the usual course of business, or combining prices for rice together with another commodity sold, or by subsidy given for business or assistance in procuring business or otherwise.

ARTICLE V—TERMS OF SALE

SECTION 1. No miller shall sell rice except on the following terms:

(*a*) All clean rice, other than packaged rice, for delivery in the Continental United States by rail or water, as follows: sight draft, order notify, bill of lading attached, payable on arrival, with one (1) percent discount allowed from f.o.b. mill price for payment within ten (10) days from date of shipment, regardless of whether the goods have arrived or not, and only net amount of invoice and draft to be accepted thereafter, *Provided, however*, That on all sales of rice stored in warehouses located outside the states of Louisiana, Texas, Arkansas, and Tennessee, the terms of sale shall be cash less 1 percent discount for payment in ten (10) days after delivery to the purchaser.

(*b*) All truck deliveries, as follows: Cash less 1 percent within ten (10) days of delivery to carrier.

(*c*) Byproducts, as follows: sight draft, order notify, bill of lading attached, net cash payable on arrival.

(*d*) Shipments to Puerto Rico, as follows: net cash with draft drawn dated same as bill of lading, with bill of lading and marine insurance certificate attached, seller's order, notify buyer, and draft to be paid promptly upon arrival and examination of goods, but, not to exceed five full business days after goods have been discharged from ship; *Except, however*, That when sale is to a buyer resident in Continental United States, terms shall be net cash, draft with bill of lading attached, payable on arrival and examination of goods at American destination (port of shipment), or cash less 1 percent if paid within ten (10) days from date of shipment.

(*e*) On all sales for direct shipment to foreign countries, the terms shall be net f.a.s. or net c.i.f. at the option of the seller; *Provided,*

however, That on all sales for direct shipment to Canada or Mexico which move all rail the terms of sale shall be net f.o.b. seller's mill.

SEC. 2. All sales and deliveries of clean or rough rice shall be pursuant to written contract which is firm as to all parties hereto.

SEC. 3. No firm contract for the sale or delivery of rough or clean rice shall be cancelled except upon the prior approval of the Millers Committee or its agent.

SEC. 4. Millers (except a cooperative association within the meaning of section 5 of article XIV) shall pay cash at time of delivery for all rice purchased by them during the effective period.

ARTICLE VI—BROKERAGE

SECTION 1. No miller shall pay a brokerage charge unless a brokerage service has in fact been rendered and no miller shall pay more than one brokerage charge on any transaction.

SEC. 2. No miller shall pay any brokerage charge in excess of the following schedule:

(*a*) On clean rice and rice flour, except packaged rice, sold within the boundaries of the Continental United States, 8 cents per 100 pounds.

(*b*) On brewers rice and screenings, 5 cents per 100 pounds.

(*c*) On rice bran and rice polish and other rice byproducts, 50 cents per ton, and on rice hulls, 25 cents per ton.

(*d*) On all rice sold in Puerto Rico, 8 cents per 100 pounds.

(*e*) On all sales made for direct shipment to foreign countries through a broker resident outside of the Continental United States 2% of the c.i.f. sales price; on sales for direct shipment to foreign countries through brokers resident in the Continental United States 2% of the c.i.f. sales price, plus 5¢ per 100 pounds.

SEC. 3. No miller shall pay any brokerage charge on the resale of rejected rice when such resale is made by the same broker.

ARTICLE VII—MARKETING FUND

SECTION 1. (*a*) When the first members of the Millers Committee have been selected by the Millers Advisory Council and have organized, the unexpended balance of the Marketing Fund or Marketing Funds, accumulated pursuant to article VII of the Marketing Agreement for Southern Rice Milling Industry dated October 13, 1933, and/or the Marketing Agreement prior to its amendment, and/or the License (either before or after its amendment of December 8, 1933) in the hands of the Control Committee as constituted under such Marketing Agreements and/or such License shall be paid, delivered, and turned over by the members of said Control Committee to the first members of the Millers Committee selected by the Millers Advisory Council, it being intended that such unexpended balance (herein referred to as "Marketing Fund No. 1") may be used by the Millers Committee for expenses incurred by the Millers Committee and/or by any other committees hereunder and/or under the Marketing Agreement prior to September 1, 1934 and the surplus shall be used by the Millers Committee, subject to disapproval by the Secretary, to increase consumption of American grown rice, to create new markets, to maintain reasonable domestic prices by financing

the export of rice and to make advances to the Secretary pursuant to section 6 of article VIII of the Marketing Agreement, and that the Millers Committee shall be deemed to be the successor of the Control Committee.

(*b*) Marketing Fund No. 1 may be deposited in such banks as the Millers Committee or its predecessor may have selected or as the Millers Committee shall hereafter select and/or may be invested or left invested by the Millers Committee in only securities of the United States of America.

ARTICLE VIII—REPORTS

SECTION 1. *To the Secretary.*—(*a*) The millers shall severally, from time to time, upon the request of the Secretary, furnish him information, on and in accordance with forms of reports to be supplied by him, for the purpose of (1) assisting the Secretary in the furtherance of his powers and duties with respect to this Amended License and/or (2) enabling the Secretary to ascertain and determine the extent to which the declared policy of the Act and the purposes of this Amended License are being effectuated, such reports to be verified under oath. The Secretary's determination as to the necessity of and justification for the making of such reports and the information called for thereby shall be final and conclusive.

(*b*) For the same purposes and/or to enable the Secretary to verify the information furnished him on said forms of reports, all the books and records of each miller, and the books and records of the affiliates and subsidiaries of each miller, shall during the usual hours of business be subject to the examination of the Secretary. The Secretary's determination as to the necessity of and justification for any such examination shall be final and conclusive.

(*c*) The millers and their respective affiliates and subsidiaries shall severally keep books and records which will clearly reflect all financial transactions of their respective businesses and the financial condition thereof.

(*d*) All information furnished the Secretary pursuant to this article shall remain confidential in accordance with the applicable General Regulations, Agricultural Adjustment Administration.

SEC. 2. *To the Millers Committee.*—(*a*) To enable the Millers Committee to perform its duties hereunder and to effectuate the purpose of this amended License each miller shall promptly furnish in such form and substantiated in such manner as the Millers Committee may from time to time prescribe, information requested by the Millers Committee. The Secretary may at any time disapprove any request for information or any forms prescribed pursuant hereto.

(*b*) The details of such reports shall be confidential and the Millers Committee shall not disclose to any person other than the Secretary detailed information concerning the business of any individual miller. It shall be the duty of the Millers Committee to furnish to the Secretary upon request any and all information furnished by the millers to the Millers Committee.

(*c*) The Millers Committee shall, if and so far as practical and consistent with the proper administration and enforcement of this Amended License, and/or of the Marketing Agreement, provide for the receipt by a confidential employee of the Millers Committee of all

reports and information received from millers pursuant hereto and/or the Marketing Agreement and for disclosing the same only in summarized form to the Millers Committee, its members or others (except the Secretary).

SEC. 3. *To Producers.*—In order to enable the producers to support applications for acreage allotments and production quotas pursuant to article VIII of the Marketing Agreement, the millers shall give to any producer upon request and without charge all available information with regard to the quantities of rough rice purchased from such producer in past years and such other information as may be necessary or desirable to the proper effectuation of article VIII of the Marketing Agreement.

ARTICLE IX—EXPENSES

SECTION 1. To carry out the provisions of this Amended License and of the Marketing Agreement (except those of articles VII and VIII of the Marketing Agreement), the Millers Committee is authorized and directed:

(*a*) From time to time, to submit to the Secretary for his approval, subject to such notice and opportunity for hearing as the Secretary shall prescribe, an itemized budget of its estimated expenses for the foregoing purposes;

(*b*) Upon the approval by the Secretary of such budget, to incur such reasonable obligations and to make such reasonable expenditures as may be necessary and proper and as are included within such budget.

SEC. 2. (*a*) Each miller who during the effective period shall mill rice of any variety or grade, shall contribute and pay to the Millers Committee an Administrative Assessment at the rate of 5 cents for each barrel of rough rice milled by him; *Provided, however,* That the Millers Committee, with the prior approval of the Secretary, may at any time and from time to time reduce or waive for any period the amount of the Administrative Assessment as to all or any part of the rice milled during any crop year; *Provided, further however,* That if, on the basis of any budget so approved, the Secretary shall be of the opinion that the current Administrative Assessment is too high or too low, he may decrease it or increase it to not more than 5 cents per barrel for the period covered by such budget, or any part of such period.

(*b*) Any Administrative Assessment payable by a miller on rice milled by such miller shall become due and payable and be paid on or before the 15th day of the calendar month next succeeding the date on which such rice was milled.

(*c*) If any miller fails to pay any such Administrative Assessment on or before the date on which it is due, there shall immediately become due and payable and be paid by such miller to the Millers Committee an additional amount, equivalent to the prevailing Administrative Assessment, for each barrel of rough rice milled by him in respect of which the Administrative Assessment has not been paid.

SEC. 3. The Millers Committee is authorized and empowered, subject to the prior approval of the Secretary, to institute legal proceedings in the name of its individual members as a committee and to take such other steps as may be necessary to collect or enforce the payment of funds from persons liable therefor pursuant to the fore-

going sections of this article. Unless otherwise provided in the notice of termination executed by the Secretary, the foregoing power shall continue after the termination of this Amended License, with respect to any funds which need to be raised and which are unpaid at the time of such termination. Nothing herein contained shall be construed to be in derogation or modification of the rights of the Secretary at any time to institute legal proceedings or to take such other steps as may be necessary to collect or enforce the payment of any such funds.

SEC. 4. Any funds (except any in or derived from a Marketing Fund) which the Millers Committee shall have on hand, or be entitled to receive, under this article, upon August 1 of 1935 or any subsequent year over and above any amount necessary to meet outstanding obligations, shall on or before December 15 of such year be returned to the millers pro rata in proportion to their contributions made pursuant to this article, and/or pursuant to article X of the Marketing Agreement; *Provided, however*, that any funds (except any in or derived from a Marketing Fund) which the Millers Committee shall have on hand, or be entitled to receive under this article or article X of the Marketing Agreement upon the termination of both this Amended License and the Marketing Agreement, over and above any amount necessary to meet outstanding obligations, shall at such time be returned to the millers pro rata in proportion to their contributions made pursuant to this article, and/or pursuant to article X of the Marketing Agreement.

ARTICLE X—MILLERS ADVISORY COUNCIL

SECTION 1. The members of the Millers Advisory Council, their alternates and successors, as named in instruments filed with the Secretary pursuant to section 2 of article XI of the Marketing Agreement, shall be deemed for all purposes under this Amended License to be the duly selected members of the Millers Advisory Council, subject, however, to the right of any licensee to protest such selection, in accordance with the applicable Administrative Orders issued by the Secretary.

SEC. 2. The Millers Advisory Council, concurrent with, and in addition to its powers and duties under the Marketing Agreement, shall have the powers and duties set forth in this Amended License; *Provided, however*, That as to all licensees who are parties to the Marketing Agreement, the Millers Advisory Council shall have the powers and duties set forth in the Marketing Agreement and/or in this Amended License (so far as each is applicable) and, as to other licensees, the Millers Advisory Council shall have only the powers and duties set forth in this Amended License. All acts of the Millers Advisory Council, as to licensees who are parties to the Marketing Agreement, shall be deemed to have been performed pursuant to the provisions of both the Marketing Agreement and of this Amended License (so far as each is applicable) and, as to other licensees, to have been performed pursuant only to the provisions of this Amended License. In the event the Marketing Agreement is terminated prior to the termination of this Amended License, the Millers Advisory Council shall continue to have the powers and duties set forth in this Amended License, and the members of the Millers Advisory Council,

their alternates and successors, shall continue to be selected by the persons and in the manner provided in article XI of the Marketing Agreement.

SEC. 3. Members of the Millers Advisory Council shall serve without compensation and shall not be entitled to expenses although necessarily incurred in the performance of their duties hereunder.

SEC. 4. A member of the Millers Advisory Council shall have only one vote as to each matter coming before said Council except as provided for the selection of members of the Millers Committee.

SEC. 5. The Millers Advisory Council shall have the following duties and powers:

(*a*) To elect a chairman and, from time to time, such other officers as it may deem advisable, and to adopt rules and regulations for the performance of its duties under this Amended License.

(*b*) To appoint and define the duties of additional committees or subcommittees to assist it in the performance of any of its duties and functions hereunder.

(*c*) To select, as provided in article XII of the Marketing Agreement, the members of the Millers Committee.

(*d*) To advise with the Millers Committee.

(*e*) To act as an intermediary between the Millers Committee and the millers.

(*f*) To propose a list of banks to the Millers Committee.

(*g*) From time to time, to submit to the Secretary for his approval, subject to such notice and opportunity for hearing as the Secretary shall prescribe, an itemized budget of its estimated expenses; and, upon the approval by the Secretary of such budget, to incur such reasonable obligations and to make such reasonable expenditures as may be necessary and proper and as are included within such budget.

SEC. 6. A member of the Millers Advisory Council shall be disqualified from voting in the selection of members of the Millers Committee, if the miller who selected said member of the Millers Advisory Council has failed to file with the Rice Section, on and in accordance with a form approved by the Rice Section, a statement of the volume of rough rice milled or exported by such miller during the three crop years last past.

ARTICLE XI—MILLERS COMMITTEE

SECTION 1. The members of the Millers Committee, and their successors, certified from time to time to the Secretary pursuant to section 5 of article XII of the Marketing Agreement, or selected by the Secretary pursuant to section 6 of article XII of the Marketing Agreement, shall be deemed for all purposes under this Amended License to be the duly selected members of the Millers Committee, subject however, to the right of any licensee to protest such selection in accordance with the applicable administrative orders issued by the Secretary.

SEC. 2. The Millers Committee, concurrent with, and in addition to its powers and duties under the Marketing Agreement, shall have the powers and duties set forth in this Amended License; *Provided, however*, That as to all licensees who are parties to the Marketing Agreement the Millers Committee shall have the powers and duties set forth in the Marketing Agreement and/or in this Amended License

(so far as each is applicable) and, as to other licensees, the Millers Committee shall have only the powers and duties set forth in this Amended License. All acts of the Millers Committee, as to licensees who are parties to the Marketing Agreement, shall be deemed to have been performed pursuant to the provisions of both the Marketing Agreement and of this Amended License (so far as each is applicable) and, as to other licensees, to have been performed pursuant only to the provisions of this Amended License. In the event the Marketing Agreement is terminated prior to the termination of this Amended License, the Millers Committee shall continue to have the powers and duties set forth in this Amended License, and the members of the Millers Committee and their successors shall continue to be selected by the persons and in the manner provided in article XII of the Marketing Agreement.

SEC. 3. Upon the selection of seven of its members, the Millers Committee may organize and commence to function; *Provided, however,* That:

(*a*) this provision shall not affect or supersede any other provision in this Amended License requiring a minimum vote with respect to specified action to be taken by the Millers Committee; and

(*b*) the Millers Committee shall not perform any of its duties or powers herein granted while there are more than two vacancies in its membership.

SEC. 4. Each and every order, regulation, decision, determination or other act of the Millers Committee or of any other committee, shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith.

SEC. 5. Members of the Millers Committee shall serve without compensation but shall be entitled to expenses necessarily incurred in the performance of their duties hereunder.

SEC. 6. The powers and duties of the Millers Committee shall be the following:

(*a*) To elect a Chairman and, from time to time, such other officers as it may deem advisable, and to adopt rules and regulations for the performance of its duties under this Amended License.

(*b*) To supervise the performance of this Amended License and to act as an intermediary between the Secretary and the millers.

(*c*) To appoint such employees and/or agents as it deems necessary and to determine the salaries and define the duties of such employees and/or agents.

(*d*) To appoint and define the duties of additional committees or subcommittees to assist it in the performance of any of its duties and functions hereunder.

(*e*) To investigate suspected violations of this Amended License and, after due notice and opportunity for hearing, to decide, subject to appeal to the Secretary, all questions, disputes and complaints which arise in connection with the performance of this Amended License and which do not concern the interests of producers.

(*f*) To act as provided in, and subject to the provisions of, article XII (entitled "Producers Committee and Millers Committee").

(*g*) To pay such expenses of the Producers Committee and/or the Millers Advisory Council as may be included within a budget or budgets approved by the Secretary.

(*h*) The Millers Committee shall keep books and records which will fully reflect its receipts, disbursements and financial transactions. The accounting system and fiscal procedure of the Millers Committee shall be as prescribed or approved by the Secretary, and shall be subject to audit by the Secretary at such times as he shall desire.

(*i*) To cooperate with the Secretary and the Producers Committee and to negotiate and confer with representatives of importers with respect to the formulation of a Marketing Agreement and/or license for importers and/or amendments to the Marketing Agreement and/or this Amended License concerning importers.

SEC. 7. The millers shall abide by the decision of the Millers Committee in any question, dispute, or complaint unless an appeal in writing is taken to the Secretary pursuant to section 3 of article XII and if such appeal is taken shall abide by the decision of the Secretary thereon. Pending the disposition by the Secretary of any such appeal, the parties involved shall abide by the decision rendered by the Millers Committee unless the Secretary shall rule otherwise pending such disposition, *provided*, that in the case of any decision requiring any payment by a miller, such miller, in case of appeal to the Secretary, shall not be required to make any such payment until such appeal is decided by the Secretary.

SEC. 8. The members of the Control Committee, as constituted under the Marketing Agreement for Southern Rice Milling Industry, dated October 13, 1933, and/or the Marketing Agreement for Southern Rice Milling Industry, dated March 5, 1934, prior to its amendment, are hereby authorized and directed to assign, transfer and deliver to the members of the Millers Committee and their successors any and all property (whether real, personal or mixed) and any and all books and records which are in their possession or under their control as such committee, and any and all claims which are accrued or which may hereafter accrue to them as such committee. In case of any dispute involving the Control Committee and/or the Millers Committee and/or one or more members of either, the matter shall be referred to the Secretary whose decision shall be final and conclusive.

ARTICLE XII—PRODUCERS COMMITTEE AND MILLERS COMMITTEE

SECTION 1. The Producers Committee and the Millers Committee, acting jointly by majority vote of each committee, shall, after due notice and opportunity for hearing, decide all questions, disputes, and complaints which concern the interests of both producers and millers and which arise in connection with the performance of this Amended License.

SEC. 2. If a member of either the Producers Committee or the Millers Committee shall be an interested party to any complaint or dispute (before it acting alone or jointly with the other committee) or a representative of such an interested party, he shall, for the purpose of the consideration of such dispute or complaint, be disqualified as a member of his committee. Such disqualification, however, shall not be deemed to create a vacancy in his committee within the prohibition of subdivision (*b*) of section 3 of article XI or of section 3 of article XIII.

SEC. 3. An appeal in writing may be taken to the Secretary, in accordance with such applicable regulations or administrative orders

as he may approve, from any decision of either Committee, or of the two Committees acting jointly, by any person aggrieved thereby, within ten days after the decision is announced. Such writing shall be addressed to and filed with the Secretary and a copy thereof shall be forwarded to the committee or committees from whose decision the appeal is taken.

SEC. 4. Pending the decision of any such appeal by the Secretary, the parties involved shall abide by the decision of the Producers Committee and/or the Millers Committee, as the case may be, unless the Secretary shall rule otherwise.

SEC. 5. In the event of an appeal, it shall be the duty of the Committee or Committees which rendered the decision from which the appeal is taken to forward to the Secretary the complete record with regard to the subject matter of such appeal.

SEC. 6. In the event that the Producers Committee and the Millers Committee do not agree as to whether a particular question, dispute or complaint or as to whether a particular type of question, dispute or complaint, arising or which might arise in connection with the performance of this Amended License and/or the Marketing Agreement is within the joint jurisdiction of the Producers Committee and the Millers Committee or is within the exclusive jurisdiction of the Producers Committee or is within the exclusive jurisdiction of the Millers Committee, the matter shall be referred for decision to the Secretary, together with such pertinent records as are available and such briefs concerning the matter as either Committee shall deem advisable, which must be filed with him within such time as he shall deem reasonable; and any decision by the Secretary with respect thereto shall be final and conclusive.

ARTICLE XIII—PRODUCERS COMMITTEE

SECTION 1. The members of the Producers Committee, their alternates and successors, as selected from time to time by the Secretary pursuant to section 1 of article XIV of the Marketing Agreement, shall be deemed for all purposes under this Amended License to be the duly selected members of the Producers Committee, subject, however, to the right of any licensee to protest such selection in accordance with the applicable administrative orders issued by the Secretary.

SEC. 2. The Producers Committee, concurrent with, and in addition to its powers and duties under the Marketing Agreement, shall have the powers and duties set forth in this Amended License; *Provided, however*, That as to all licensees who are parties to the Marketing Agreement, the Producers Committee shall have the powers and duties set forth in the Marketing Agreement and/or in this Amended License (so far as each is applicable) and, as to other licensees the Producers Committee shall have only the powers and duties set forth in this Amended License. All acts of the Producers Committee, as to licensees who are parties to the Marketing Agreement, shall be deemed to have been performed pursuant to the provisions of both the Marketing Agreement and of this Amended License (so far as each is applicable) and, as to other licensees, to have been performed pursuant only to the provisions of this Amended License. In the event the Marketing Agreement is terminated prior to termination of this Amended License, the Producers Committee shall continue

to have the powers and duties set forth in this Amended License, and the members of the Producers Committee, their alternates and successors, shall continue to be selected by the person and in the manner provided in article XIV of the Marketing Agreement.

SEC. 3. Upon the selection of all of its members, the Producers Committee may organize and commence to function; *Provided, however,* That the Producers Committee shall not perform any of its duties or powers herein granted while there are more than four vacancies in its membership.

SEC. 4. Each and every order, regulation, decision, determination, or other act of the Producers Committee or of any other committee, shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith.

SEC. 5. Members of the Producers Committee shall serve without compensation but shall be entitled to expenses necessarily incurred in the performance of their duties hereunder.

SEC. 6. The powers and duties of the Producers Committee shall be the following:

(*a*) To elect a Chairman and, from time to time, such other officers as it may deem advisable, and to adopt rules and regulations for the performance of its duties under this Amended License.

(*b*) To act as an intermediary between the Secretary and the producers, and between the millers and the producers.

(*c*) To appoint and define the duties of additional committees or subcommittees to assist it in the performance of any of its duties or functions hereunder.

(*d*) To investigate suspected violations of this Amended License, if a grower is a party to such violations, and to report to the Secretary any violations it believes to have occurred, together with its recommendations, if any.

(*e*) After due notice and opportunity for hearing, to decide, subject to appeal to the Secretary, all questions, disputes and complaints which arise in connection with the performance of this Amended License and which concern only the interests of the producers.

(*f*) To act as provided in, and subject to the provisions of, article XII (entitled "Producers Committee and Millers Committee").

(*g*) From time to time, to submit to the Secretary for his approval, subject to such notice and opportunity for hearing as the Secretary shall prescribe, an itemized budget of its estimated expenses; and, upon the approval by the Secretary of such budget, to incur such reasonable obligations and to make such reasonable expenditures as may be necessary and proper and as are included within such budget.

(*h*) To cooperate with the Secretary and the Millers Committee and to negotiate and confer with representatives of importers with respect to the formulation of a Marketing Agreement and/or license for importers and/or amendments to the Marketing Agreement and/or this Amended License concerning importers.

ARTICLE XIV—MISCELLANEOUS

SECTION 1. The members of any committee or council, and any employees thereof, shall not be held responsible individually in any

way whatsoever to any miller, producer, or any other person, for errors in judgment, mistakes, or other acts either of commission or omission, as such member or employee, except for acts of dishonesty.

SEC. 2. Nothing herein contained is or shall be construed to be in derogation or modification of the rights of the Secretary, or of the United States (a) to exercise any powers granted by the act or otherwise and/or (b) in accordance with such powers, to act in the premises whenever he shall deem it advisable.

SEC. 3. If any provision of this Amended License is declared invalid or the applicability thereof to any person, circumstance or thing is held invalid, the validity of the remainder of this Amended License and/or the applicability of any provision of this Amended License to any other person, circumstance or thing shall not be affected thereby.

SEC. 4. Any change in a minimum price, conversion charge, premium, or discount and any change in Schedule 1 by the Secretary shall be deemed to be upon sufficient notice and any notice provided for herein shall be deemed to be sufficient if notice thereof is given similar to that required by regulations of the Agricultural Adjustment Administration in effect at the time for the amendment of licenses issued pursuant to section 8 (3) of the Act; *Provided, however,* That this section shall not be construed as requiring any such notice.

SEC. 5. Any contract or agreement entered into by any miller prior to or during the effective period of this Amended License, for the sale or other disposition of rice or for the purchase or other acquisition of rice or in respect of rice shall be deemed to be superseded by the terms and provisions of this Amended License and by any minimum price, conversion charge, premium, or discount established pursuant to this Amended License and by any action, decision or determination of the Millers Committee and/or the Secretary in accordance with this Amended License, whether established, done or made prior or subsequent to such contract or agreement, insofar as such contract or agreement is inconsistent with any term or provision of this Amended License or with any such minimum price, conversion charge, premium or discount or with any such action, decision or determination; *Provided, however,* That this section 5 shall not apply to any such contract or agreement hereafter made where the miller making the same reports the same to the confidential employee of the Millers Committee provided for in section 2 (*c*) of article VIII (or to the Secretary if no such employee is in office) within five days after the same is made, nor shall this section 5 apply to any such contract or agreement heretofore made for the sale of clean rice if it was in accordance with the provisions of the License as they were prior to this amendment and if it is so reported within ten days after the effective date of this amendment. Any such report shall include the price, the quantity sold or bought, when delivery was made or is to be made and a sales or purchase number by which such contract or agreement can be identified. No such report to such confidential employee need include the name of the person purchasing from the miller nor the name of the person selling to the miller, but such miller shall when requested report such names to the Secretary or any duly authorized agent of the Secretary, such names to be treated as confidential. Any report, containing such information, heretofore made to the Control Committee or any agent or agency of the Secretary shall be deemed a compliance with this proviso.

SEC. 6. During the effective period, each miller shall mill only rice which has been purchased or grown by such miller. Within the meaning of this Amended License, rice produced by the members of a cooperative association shall be deemed to have been purchased by such cooperative association, and a cooperative association shall be deemed to mean the Arkansas Rice Growers Cooperative Association and any other bona fide cooperative association of producers which mills, in a mill or mills operated by it, rice received by it from its members, which is obligated to receive and sell its members' rice and which shall have received the prior approval of the Secretary.

SEC. 7. The Secretary may at any time and from time to time inspect any and all rough rice in the possession or under the control of any miller.

SEC. 8. In the event this Amended License is terminated or amended by the Secretary, any and all obligations which shall have arisen, or which may thereafter arise in connection therewith, by virtue of or pursuant to this Amended License, and any violations of this Amended License which may have occurred prior to such termination or amendment shall be deemed not to be released, affected, waived, or terminated by reason thereof, unless so expressly provided in the notice of termination of, or the amendment to, this Amended License.

SEC. 9. Notwithstanding a termination of this Amended License and provided that the Secretary shall so direct, the members of the Millers Committee at the time of such termination shall, under the control of and subject to supervision and approval by the Secretary, as trustees receive all property held or controlled by the Millers Committee at the time of such termination, collect all sums owing to the Millers Committee and liquidate all property held or controlled by the Millers Committee and after paying all outstanding obligations shall distribute equitably in accordance with the provisions of this Amended License to those entitled thereto or use in accordance with the purposes of this Amended License all remaining funds held by them as such trustees; *Provided, however*, That the Secretary may remove such trustees, or any of them, and appoint their successors or a successor.

SEC. 10. The Secretary may by designation in writing, name any person, including any officer or employee of the Government, or name any Bureau or Division in the Department of Agriculture, to act as his agent or agency in connection with any of the provisions of this Amended License.

SEC. 11. This Amendment to the License and this Amended License shall take effect as to every miller at the time and upon the date set forth herein above the signature of the Secretary.

SEC. 12. The provisions of the License, except as amended by this Amendment, shall continue to be in full force and effect.

SEC. 13. Any and all obligations which shall have arisen prior to the effective date of this Amendment, or which thereafter arise in connection therewith, by virtue of or pursuant to the License, and any violations of the License which may have occurred prior to the effective date of this Amendment, shall be deemed not to be released, affected, waived or terminated by reason of this Amendment, except as expressly provided herein.

SEC. 14. The Secretary hereby determines that an emergency exists which requires a shorter period of notice than three days and that the period of notice, with respect to this Amendment to the License and the issuance of this Amended License, which is herein provided, is reasonable under the circumstances.

In witness whereof, H. A. WALLACE, Secretary of Agriculture does hereby execute, in duplicate, this Amendment to the License and does hereby issue this Amended License in the City of Washington, District of Columbia, on this 20th day of July, 1934, and pursuant to the provisions hereof declares this Amendment and this Amended License to be effective on and after 12:01 a.m. eastern standard time, July 21, 1934.

H A Wallace

Secretary of Agriculture.

SCHEDULE 1

PREMIUMS

Premium percentages, as named in this Schedule are to be applied to the base price for Prime No. 1 A Milling quality rough rice as such may be named, for the several varieties, by the Secretary.

The price for rough rice on which the estimated yield of HEAD RICE is above the yield named as the minimum requirement for the designation PRIME, shall be a premium of one-half of one percent for each full pound by which the estimate exceeds the yield required for the designation PRIME. The price for rough rice on which the estimate for TOTAL YIELD is above the yield named as the minimum requirement for the designation "A" shall be a premium of one-half of one percent for each full two pounds by which the estimate exceeds the yield required for the designation "A". When the estimated yield of HEAD RICE is above the requirement for the designation PRIME by one full pound, or more, and the estimate for TOTAL YIELD is above the requirement for the designation "A" by two full pounds, or more, the accumulated premiums shall apply.

DISCOUNTS

Discounts, as named in this Schedule, are to be applied to the base price for Prime No. 1 A Milling quality rough rice as such may be named, for the several varieties, by the Secretary.

Discounts are to apply for each grade factor in the Standards and when rough rice is graded below No. 1 for two or more grade factors, or lower than No. 1 for one or more grade factors and lower than the highest Special Designation for a grade, or lower than the highest designation for two or more Special Grades, the accumulated discounts shall apply, subject to such exceptions as are hereinafter noted.

TABLE A.—*Discounts for rough rice*

For the Grade Factor

TOTAL DAMAGED KERNALS

United States Grade	Percentage allowed for grade	Discount from base price
		Per cent
No. 1	2%	0
No. 2	2.1% to 4% inc	3
No. 3	4.1% to 7% inc	7
No. 4	7.1% to 10% inc	10
No. 5	10.1% to 12.5% inc	15
No. 5	12.6% to 15% inc	15
No. 6	15.1% to 17.5% inc	20
No. 6	17.6% to 20% inc	20

The discount for rough rice containing over 20% of TOTAL DAMAGED KERNELS shall be 20% of the base price, plus one-half of one percent of such price, for each full one percent of TOTAL DAMAGED KERNELS in excess of 20%.

A discount may be claimed for either TOTAL DAMAGED KERNELS or HEAT DAMAGED KERNELS, however, discounts for both factors may not be claimed.

TABLE B.—*Discounts for rough rice*

For the Grade Factor

HEAT DAMAGED KERNELS

United States Grade	Percentage allowed for grade	Discount from base price
		Per cent
No. 1	Trace	2
No. 2	0.02%	4
No. 3	0.04%	8
No. 4	0.06%	10.
No. 5	0.08%	13. 5
No. 6	0.1%	17. 5

The discount for rough rice containing over 0.1% of HEAT DAMAGED KERNELS shall be 17.5% of the base price, plus:

For such excess:	The additional discount shall be:
From 0.2% to 1% inc	1% of such base price for each 0.1% of Heat Damaged Kernels.
From 1.1% to 5% inc	1% of such base price for each 0.5% of Heat Damaged Kernels.
From 5.1% upward	1% of such base price for each 1% of Heat Damaged Kernels.

A discount may not be claimed for HEAT DAMAGED KERNELS and TOTAL DAMAGED KERNELS, or for HEAT DAMAGED KERNELS and MUSTY ODOR, or for HEAT DAMAGED KERNELS and STAIN.

TABLE C–1.—*Discounts for rough rice*

For the Grade Factor

RED RICE

For the varieties Edith, Honduras, Fortuna, Carolina, American Patna, and No. 2702 (Nira) [1]

United States Grade	Percentage allowed for grade	Discount from base price
		Per cent
No. 1	To 0.5%	0
No. 2	0.6% to 1.5% inc	1
No. 2	1.6% to 2.5% inc	2
No. 3	2.6% to 3.8% inc	5
No. 3	3.9% to 5% inc	7
No. 4	5.1% to 7.5% inc	9
No. 4	7.6% to 10% inc	13
No. 5	10.1% to 12.5% inc	15
No. 5	12.6% to 15% inc	17
No. 6	15.1% to 17.5% inc	19
No. 6	17.6% to 20% inc	25

[1] United States Standards of Grade have not been formulated for the rough rice variety No. 2702 (Nira).

The discount for rough rice, of the above varieties, containing over 20% RED RICE shall be 25% of the base price, plus one-half of one percent of such price, for each full one percent of RED RICE in excess of 20%.

TABLE C–2.—*Discounts for rough rice*

For the Grade Factor

RED RICE

For the varieties, Lady Wright, Early Wright, Shomed, Blue Rose, Early Prolific and Japan

United States Grade	Percentage allowed for grade	Discount from base price
		Per cent
No. 1	To 0.5%	0
No. 2	0.6% to 1.5% inc	1
No. 2	1.6% to 2.5% inc	2
No. 3	2.6% to 3.8% inc	3
No. 3	3.9% to 5% inc	5
No. 4	5.1% to 7.5% inc	6
No. 4	7.6% to 10% inc	8
No. 5	10.1% to 12.5% inc	10
No. 5	12.6% to 15% inc	12
No. 6	15.1% to 17.5% inc	14
No. 6	17.6% to 20% inc	18

The discount for rough rice, of the above-named varieties, containing over 20% RED RICE shall be 18% of the base price, plus one-half of one percent of such price, for each full one percent of RED RICE in excess of 20%.

TABLE D.—*Discounts for rough rice*

For the Grade Factor

CEREAL GRAINS

United States Grade	Percentage allowed for grade	Discount from base price
		Per cent
No. 1	Trace	0
No. 2	0.02%	1
No. 3	0.04%	2
No. 4	0.06%	3
No. 5	0.08%	4
No. 6	0.1%	5

The discount for rough rice containing CEREAL GRAINS in excess of 0.1% shall be 5% of the base price, plus one percent of such price for each 0.1% of CEREAL GRAINS in excess of 0.1%.

A discount may be claimed for either CEREAL GRAINS or for RICE OF OTHER CLASSES, however, discounts may not be claimed for both factors.

TABLE E.—*Discounts for rough rice*

For the Grade Factor

RICE OF OTHER CLASSES

United States Grade	Percentage allowed for grade	Discount from base price
		Per cent
No. 1	1%	0
No. 2	2%	2
No. 3	4%	5
No. 4	6%	8
No. 5	10%	12

The discount for rough rice containing RICE OF OTHER CLASSES in excess of 10% shall be 12% of the base price, plus one-half of one percent of such price for each full one percent of RICE OF OTHER CLASSES in excess of 10%.

A discount may be claimed either for RICE OF OTHER CLASSES or CEREAL GRAINS, however, discounts may not be claimed for both factors.

TABLE F–1.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the variety, Honduras

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
Prime	70 lbs	0
Good	69 lbs	1
Good	68 lbs	2
Good	67 lbs	3
Good	66 lbs	4
Good	65 lbs	5
Medium	62–64 lbs. inc	7
Medium	60–61 lbs. inc	9
Fair	57–59 lbs. inc	11
Fair	55–56 lbs. inc	13
Ordinary	52–54 lbs. inc	15
Ordinary	50–51 lbs. inc	17

The discount for Honduras rough rice, with an estimated yield of HEAD RICE below 50 pounds, shall be 17% of the base price, plus one percent of such price for each full pound of HEAD RICE below 50 pounds.

If Honduras rough rice is subject to discount for MOISTURE, then the discount for HEAD RICE yield may not exceed 20%.

TABLE F-2.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the varieties, Fortuna, Carolina and No. 2702 (Nira)[1]

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
Prime	75 lbs.	0
Good	74 lbs.	5
Good	73 lbs.	5
Good	72 lbs.	5
Good	71 lbs.	5
Good	70 lbs.	5
Medium	67–69 lbs. inc.	10
Medium	65–66 lbs. inc.	10
Fair	62–64 lbs. inc.	15
Fair	60–61 lbs. inc.	15
Ordinary	57–59 lbs. inc.	20
Ordinary	55–56 lbs. inc.	20

[1]United States Standards of grade have not been formulated for the rough rice variety No. 2702 (Nira.)

The discount for rough rice, of the above named varieties, with an estimated yield of HEAD RICE below 55 pounds, shall be 20% of the base price, plus one percent of such price for each full pound of HEAD RICE below 55 pounds.

If rough rice of the above named varieties is subject to discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 20%.

TABLE F-3.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the variety, Edith

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
Prime	85 lbs.	0
Good	84 lbs.	5
Good	83 lbs.	5
Good	82 lbs.	5
Good	81 lbs.	5
Good	80 lbs.	5
Medium	77–79 lbs. inc.	10
Medium	75–76 lbs. inc.	10
Fair	72–74 lbs. inc.	15
Fair	70–71 lbs. inc.	15
Ordinary	67–69 lbs. inc.	20
Ordinary	65–66 lbs. inc.	20

The discount for Edith rough rice, with an estimated yield of HEAD RICE below 65 pounds, shall be 20% of the base price, plus one percent of such price for each full pound of HEAD RICE below 65 pounds. If Edith rough rice is subject to a discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 20%.

TABLE F-4.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the variety, American Patna

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
Prime	75 lbs	0
Good	74 lbs	1
Good	73 lbs	2
Good	72 lbs	3
Good	71 lbs	4
Good	70 lbs	5
Medium	67–69 lbs. inc	7
Medium	65–66 lbs. inc	9
Fair	62–64 lbs. inc	11
Fair	60–61 lbs. inc	13
Ordinary	57–59 lbs. inc	15
Ordinary	55–56 lbs. inc	17

The discount for American Patna rough rice, with an estimated yield of HEAD RICE below 55 pounds, shall be 17% of the base price, plus one percent of such price for each full pound of HEAD RICE below 55 pounds. If American Patna rough rice is subject to a discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 20%.

TABLE F-5.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the varieties, Blue Rose and Japan

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
Prime	95 lbs	0
Good	94 lbs	1
Good	93 lbs	2
Good	92 lbs	3
Good	90–91 lbs. inc	4
Medium	87–89 lbs. inc	6
Medium	85–86 lbs. inc	7
Fair	82–84 lbs. inc	8
Fair	80–81 lbs. inc	9
Ordinary	77–79 lbs. inc	10
Ordinary	75–76 lbs. inc	11

The discount for rough rice of the above named varieties, with an estimated yield of HEAD RICE below 75 pounds, shall be 11% of the base price, plus one percent of such price for each full pound of HEAD RICE below 75 pounds.

If rough rice of the above named varieties is subject to a discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 15%.

TABLE F–6.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the varieties, Early Prolific, Shomed and Louisiana Pearl

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
Prime	90 lbs	0
Good	89 lbs	1
Good	88 lbs	2
Good	87 lbs	3
Good	85–86 lbs. inc	4
Medium	82–84 lbs. inc	7
Medium	80–81 lbs. inc	7
Fair	77–79 lbs. inc	9
Fair	75–76 lbs. inc	9
Ordinary	72–74 lbs. inc	11
Ordinary	70–71 lbs. inc	11

The discount for rough rice of the above named varieties, with an estimated yield of HEAD RICE below 70 pounds, shall be 11% of the base price, plus one percent of such price for each full pound of HEAD RICE below 70 pounds.

If rough rice of the above named varieties is subject to discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 15%.

TABLE F–7.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the varieties, Lady Wright and Early Wright

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
Prime	90 lbs	0
Good	89 lbs	1
Good	88 lbs	2
Good	87 lbs	3
Good	85–86 lbs. inc	4
Medium	82–84 lbs. inc	7
Medium	80–81 lbs. inc	7
Fair	77–79 lbs. inc	9
Fair	75–76 lbs. inc	9
Ordinary	72–74 lbs. inc	11
Ordinary	70–71 lbs. inc	11

The discount for rough rice of the above named varieties, with an estimated yield of HEAD RICE below 70 pounds, shall be 11% of the base price, plus one percent of such price, for each full pound of HEAD RICE below 70 pounds.

If rough rice of the above named varieties is subject to discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 15%.

TABLE G–1.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (TOTAL YIELD)

For the varieties, Edith, Louisiana Pearl, Japan, Shomed, Blue Rose

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
A	110 lbs	0
B	108 lbs	1.5
C	106 lbs	3
D	104 lbs	4.5
E	102 lbs	6

The discount for rough rice, of the above named varieties, with an estimated TOTAL YIELD of less than 102 pounds, shall be 6% of the base price, plus one-half of one percent of such price for each full pound of TOTAL YIELD below 102 pounds.

TABLE G–2.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (TOTAL YIELD)

For the varieties, Honduras, Fortuna, Carolina, Lady Wright, Early Wright, American Patna, Early Prolific, and No. 2702 (Nira) [1]

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
A	108 lbs	0
B	106 lbs	1.5
C	104 lbs	3
D	102 lbs	4.5
E	100 lbs	6

[1] United States Standards of grade have not been formulated for the rough rice variety No. 2702 (Nira).

The discount for rough rice of the above named varieties, with an estimated TOTAL YIELD of less than 100 pounds, shall be 6% of the base price, plus one-half of one percent of such price for each full pound of TOTAL YIELD below 100 pounds.

TABLE H.—*Discounts for rough rice*

For the Grade Factor

STAIN

The discount for STAINED rough rice shall be 3% of the base price, except that no discount may be claimed for STAINED rough rice if a discount is claimed for the grade factors MOISTURE, or MUDDY KERNELS, or MUD-LUMPS, or HEAT DAMAGED KERNELS, or MUSTY ODOR.

TABLE I.—*Discounts for rough rice*

For the Grade Factor

MUSTY ODOR

The discount for MUSTY rough rice shall be 5% of the base price, except that no discount may be claimed for MUSTY rough rice if a discount is claimed for the grade factors MOISTURE or HEAT DAMAGED KERNELS or STAIN.

TABLE J.—*Discounts for rough rice*

For the Grade Factor

MOISTURE

United States Grade (Special Designation)	Percentage allowed for grade	Discount from base price
		Per cent
Normal	14%	0
Damp	14.5%	0
Damp	14.6% to 15%, inc	3
Damp	15.1% to 15.5%, inc	6
Wet	15.6% to 16%, inc	8
Wet	16.1% to 17%, inc	12

The discount for rough rice containing MOISTURE in excess of 17% shall be 12% of the base price, plus one percent of such price for each full one-half of one percent of MOISTURE in excess of 17%.

No discount may be claimed for MOISTURE if a discount is claimed for MUSTY ODOR or HEAT DAMAGED KERNELS or STAIN.

TABLE K.—*Discounts for rough rice*

For the Grade Factor

WEED SEEDS (SEPARABLE)

United States Grade (Special Designation)	Percentage allowed for grade	Discount from base price
		Per cent
Not Seedy	0.1%	0
Slightly Seedy	0.5%	0
Seedy	2.0%	1

The discount for rough rice containing over 2% of WEED and/or GRASS SEEDS (Separable) shall be 1% of the base price, plus one-half of one percent of such price for each full one percent of WEED and/or GRASS SEEDS in excess of 2%.

TABLE L.—*Discounts for rough rice*

For the Grade Factor

WEED SEEDS (INSEPARABLE)

United States Grade (Special Designation)	Percentage allowed for grade	Discount from base price
		Per cent
Not Seedy	0.1%	0
Slightly Seedy	0.5%	5
Seedy	2.0%	12

The discount for rough rice containing over 2% of WEED and/or GRASS SEEDS (Inseparable) shall be 12% of the base price, plus one percent of such price for each full one-half of one percent of such inseparable seeds in excess of 2%.

TABLE M.—*Discounts for rough rice*

For the Grade Factor

CHALKY KERNELS

United States Grade (Special Designation)	Percentage allowed for grade	Discount from base price
		Per cent
Not Chalky	1.5%	0
Not Chalky	1.6% to 3% inc	1
Slightly Chalky	3.1% to 4.5% inc	2
Slightly Chalky	4.6% to 6% inc	3
Chalky	6.1% to 9% inc	4
Chalky	9.1% to 12% inc	5

The discount for rough rice containing over 12% CHALKY KERNELS shall be 5% of the base price, plus one-half of one percent of such price for each full one percent of CHALKY KERNELS in excess of 12%.

TABLE N.—*Discounts for rough rice*

For the Grade Factor

MUDDY KERNELS

United States Grade (Special Designation)	Percentage allowed for grade	Discount from base price
		Per cent
Clear	1%	0
Slightly Muddy	2%	3
Muddy	5%	8

The discount for rough rice containing in excess of 5% MUDDY KERNELS shall be 8% of the base price, plus 0.1% of such price for each full one percent of MUDDY KERNELS in excess of 5%.

TABLE O.—*Discounts for rough rice*

For the Grade Factor

MUD LUMPS

United States Grade (Special Designation)	Percentage allowed for grade	Discount from base price
		Per cent
Clear	0.1%	0
Slightly Muddy	0.5%	3
Muddy	2.0%	8

The discount for rough rice containing in excess of 2% MUD LUMPS shall be 8% of the base price, plus 0.1% of such price for each 0.1% of MUD LUMPS in excess of 2%.

EXHIBIT A—(ARTICLE XI OF MARKETING AGREEMENT)

ARTICLE XI—MILLERS ADVISORY COUNCIL

SECTION 1. A Millers Advisory Council shall be established consisting of members who shall be selected in accordance with the provisions of this article and who shall serve until they are removed or resign. The initial members shall be selected within ten days after notice from the Rice Section. No delay in the selection of any member or successor shall be deemed to invalidate any such selection.

SEC. 2. One member, and each of his successors, shall be selected by each miller who is signatory to this Agreement and/or is licensed by any license supplementary hereto issued pursuant to section 8 (3) of the Act, by filing with the Secretary an instrument duly executed by such miller designating the individual whom he has selected. A member, or his successor, may be removed by the miller which designated him. Such removal shall become effective upon the filing with the Secretary of an instrument duly executed by such miller or upon a date specified in any such instrument, whichever is later.

SEC. 3. Each miller selecting a member of the Millers Advisory Council may, in the same manner, at any time, select an alternate, to act in the place and stead of such member (a) in his absence, and/or (b) in the event of his removal, resignation, or disqualification, until a successor for his unexpired term has been selected.

SEC. 4. Any question as to whom a miller has selected as a member or alternate shall be submitted to the Rice Section, and its decision shall be final and conclusive.

SEC. 5. Members of the Millers Advisory Council shall serve without compensation and shall not be entitled to expenses although necessarily incurred in the performance of their duties hereunder.

SEC. 6. A member of the Millers Advisory Council shall have only one vote as to each matter coming before said Council except as provided for the selection of members of the Millers Committee.

SEC. 7. The Rice Section shall call an organization meeting of the Millers Advisory Council at such time and place as the Rice Section may designate.

SEC. 8. The Millers Advisory Council shall have the following duties and powers:

(*a*) To elect a chairman and, from time to time, such other officers as it may deem advisable, and to adopt rules and regulations for the performance of its duties under this Agreement.

(*b*) To appoint and define the duties of additional committees or subcommittees to assist it in the performance of any of its duties and functions hereunder.

(*c*) To select, as provided in article XII, the members of the Millers Committee.

(*d*) To advise with the Millers Committee.

(*e*) To act as an intermediary between the Millers Committee and the millers.

(*f*) To propose a list of banks to the Millers Committee.

(*g*) From time to time, to submit to the Secretary for his approval, subject to such notice and opportunity for hearing as the Secretary shall prescribe, an itemized budget of its estimated expenses; and, upon the approval by the Secretary of such budget, to incur such reasonable obligations and to make such reasonable expenditures as may be necessary and proper and as are included within such budget.

SEC. 9. A member of the Millers Advisory Council shall be disqualified from voting in the selection of members of the Millers Committee, if the miller who selected said member of the Millers Advisory Council has failed to file with the Rice Section, on and in accordance with a form approved by the Rice Section, a statement of the volume of rough rice milled or exported by such miller during the three crop years last past.

EXHIBIT B—(ARTICLE XII OF MARKETING AGREEMENT)

ARTICLE XII—MILLERS COMMITTEE

SECTION 1. The name of the Control Committee as constituted under the Marketing Agreement for Southern Rice Milling Industry, dated October 13, 1933, and/or this Agreement prior to its amendment is hereby changed to the "Millers Committee".

SEC. 2. The present members of said Millers Committee shall continue in office until the selection of their successors whereupon they shall cease to hold office.

SEC. 3. The Millers Committee shall consist of seven members who, except as provided in section 2, shall be selected in accordance with the provisions of this article and shall serve until July 1 of the year following the date of their respective selections and until their respective successors are selected. The initial members hereafter selected shall be selected at the initial meeting of the Millers Advisory Council and their respective successors (other than those selected to fill vacancies) shall be selected annually thereafter at least thirty days prior to the termination of the term of office of their respective predecessors. No delay in the selection of any member or successor shall be deemed to invalidate any such selection.

SEC. 4. From a list of nominees submitted by members of the Millers Advisory Council, all seven members (and each of their successors) of the Millers Committee shall be selected in the following manner: Each member (not disqualified) of the Millers Advisory Council shall be entitled to a vote equal to seven times the weight which the volume of rough rice milled or exported by the miller who selected him during the three preceding crop years bears to the total volume of rough rice milled or exported by all millers during said years. The vote of any member of the Millers Advisory Council may be cast for one nominee or distributed among two or more nominees as such member shall prefer. The seven nominees receiving the largest number of votes shall be the members of the Millers Committee.

SEC. 5. Upon the selection (other than to fill a vacancy) of any members of the Millers Committee, the secretary of the Millers Advisory Council shall certify to the Secretary, the name and address of each such member, and the date or dates of their selection. The members so certified to the Secretary shall be deemed for all purposes to be the duly selected members of the Millers Committee, subject, however, to the right of any interested party to protest such selection in accordance with the applicable Administrative Orders issued by the Secretary.

SEC. 6. To fill any vacancy occasioned by the removal, resignation, demise or disqualification of any member of the Millers Committee, a successor for his unexpired term shall be selected by the Secretary of Agriculture.

SEC. 7. Upon the selection of seven of its members, the Millers Committee may organize and commence to function; *Provided, however*, That:

(*a*) This provision shall not affect or supersede any other provision in this Agreement requiring a minimum vote with respect to specified action to be taken by the Millers Committee; and

(*b*) The Millers Committee shall not perform any of its duties or powers herein granted while there are more than two vacancies in its membership.

SEC. 8. The members of the Millers Committee or of any other committee created hereunder (including successors, alternates, or persons selected by the Secretary), and any agent or employee appointed or employed by the Millers Committee or by any other committee, shall be subject to removal by the Secretary at any time with or without cause. Each and every order, regulation, decision, determination or other act of the Millers Committee or of any other committee, shall be subject to the continuing right of the Secretary to disapprove of the same at anytime, and, upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith.

SEC. 9. Members of the Millers Committee shall serve without compensation but shall be entitled to expenses necessarily incurred in the performance of their duties hereunder.

SEC. 10. The powers and duties of the Millers Committee shall be the following:

(a) To elect a Chairman and, from time to time, such other officers as it may deem advisable, and to adopt rules and regulations for the performance of its duties under this Agreement.

(b) To supervise the performance of this Agreement and to act as an intermediary between the Secretary and the millers.

(c) To appoint such employees and/or agents as it deems necessary and to determine the salaries and define the duties of such employees and/or agents.

(d) To appoint and define the duties of additional committees or sub-committees to assist it in the performance of any of its duties and functions hereunder.

(e) To investigate suspected violations of this Agreement, and, after due notice and opportunity for hearing, to decide, subject to appeal to the Secretary, all questions, disputes and complaints which arise in connection with the performance of this Agreement and which do not concern the interests of producers.

(f) To act as provided in, and subject to the provisions of, article XIII, (entitled "Producers Committee and Millers Committee").

(g) To pay such expenses of the Producers Committee and/or the Millers Advisory Council as may be included within a budget or budgets approved by the Secretary.

(h) The Millers Committee shall keep books and records which will fully reflect its receipts, disbursements and financial transactions. The accounting system and fiscal procedure of the Millers Committee shall be as prescribed or approved by the Secretary, and shall be subject to audit by the Secretary at such times as he shall desire.

(i) To cooperate with the Secretary and the Producers Committee and to negotiate and confer with representatives of importers with respect to the formulation of a Marketing Agreement for importers and/or amendments to this Agreement concerning importers.

SEC. 11. The contracting millers agree to abide by the decision of the Millers Committee in any question, dispute, or complaint unless an appeal in writing is taken to the Secretary pursuant to section 3 of article XIII and if such appeal is taken to abide by the decision of the Secretary thereon. Pending the disposition by the Secretary of any such appeal, the parties involved shall abide by the decision rendered by the Millers Committee unless the Secretary shall rule otherwise pending such disposition, provided, that in the case of any decision requiring any payment by a miller, such miller, in case of appeal to the Secretary, shall not be required to make any such payment until such appeal is decided by the Secretary.

SEC. 12. The members of said Control Committee are hereby authorized and directed to assign, transfer and deliver to the members of the Millers Committee and their successors any and all property (whether real, personal or mixed) and any and all books and records which are in their possession or under their control as such committee, and any and all claims which are accrued or which may hereafter accrue to them as such committee. In case of any dispute involving the Control Committee and/or the Millers Committee and/or one or more members of either, the matter shall be referred to the Secretary whose decision shall be final and conclusive.

SEC. 13. It being difficult to ascertain the amount of damage which will be sustained by the parties signatory hereto by reason of the violation of any of the terms hereof by any one of the contracting millers, it is agreed

(a) That for each violation of any of the terms of this Agreement pertaining to the sale of clean rice, the offending contracting miller shall, upon demand, pay to the Millers Committee a sum which will represent $1.00 upon each pocket of rice involved in the offending transaction, and

(b) That for each violation of any of the terms of this Agreement pertaining to the purchase or sale of rough rice, the offending contracting miller shall, upon

demand, pay to the Millers Committee a sum which will represent 50 cents upon each barrel of rough rice involved in the offending transaction.

(*c*) Any and all payments pursuant to subsection 13 (*a*) shall become part of Marketing Fund No. 2.

(*d*) Any and all payments pursuant to subsection 13 (*b*) shall be used to pay to any producer involved in such transaction any amount by which the purchase price was below the applicable minimum price, and any excess shall become part of Marketing Fund No. 2.

EXHIBIT C (ARTICLE XIV OF MARKETING AGREEMENT)

ARTICLE XIV—PRODUCERS COMMITTEE

SECTION 1. A Producers Committee shall be established consisting of seven members who and whose successors (and whose alternates, if any) shall be selected by the Secretary and who shall serve until July 1 of the year following the date of their respective selections and until their respective successors are selected.

SEC. 2. Each alternate, if any, shall act in the place and stead of the member for whom he is selected to act as alternate (*a*) in his absence, and/or (*b*) in the event of his removal, resignation or disqualification, until a successor for his unexpired term has been selected.

SEC. 3. Upon the selection of all of its members, the Producers Committee may organize and commence to function; *Provided, however*, That the Producers Committee shall not perform any of its duties or powers herein granted while there are more than four vacancies in its membership.

SEC. 4. The members of the Producers Committee or of any other committee created hereunder (including successors or alternates), and any agent or employee appointed or employed by the Producers Committee or by any other committee, shall be subject to removal by the Secretary at any time with or without cause. Each and every order, regulation, decision, determination or other act of the Producers Committee or of any other committee, shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith.

SEC. 5. Members of the Producers Committee shall serve without compensation but shall be entitled to expenses necessarily incurred in the performance of their duties hereunder.

SEC. 6. The powers and duties of the Producers Committee shall be the following:

(*a*) To elect a Chairman and, from time to time, such other officers as it may deem advisable, and to adopt rules and regulations for the performance of its duties under this Agreement.

(*b*) To act as an intermediary between the Secretary and the producers, and between the millers and the producers.

(*c*) To appoint and define the duties of additional committees or subcommittees to assist it in the performance of any of its duties or functions hereunder.

(*d*) To investigate suspected violations of this Agreement, if a grower is a party to such violations, and to report to the Secretary any violations it believes to have occurred, together with its recommendations, if any.

(*e*) After due notice and opportunity for hearing, to decide, subject to appeal to the Secretary, all questions, disputes and complaints which arise in connection with the performance of this Agreement and which concern only the interests of the producers.

(*f*) To act as provided in, and subject to the provisions of, article XIII (entitled "Producers Committee and Millers Committee").

(*g*) From time to time, to submit to the Secretary for his approval, subject to such notice and opportunity for hearing as the Secretary shall prescribe, an itemized budget of its estimated expenses; and, upon the approval by the Secretary of such budget, to incur such reasonable obligations and to make such reasonable expenditures as may be necessary and proper and as are included within such budget.

(*h*) To cooperate with the Secretary and the Millers Committee and to negotiate and confer with representatives of importers with respect to the formulation of a Marketing Agreement for importers and/or amendments to this Agreement concerning importers.

○

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Nos. 577-581, 585-587

In the Supreme Court of the United States

OCTOBER TERM, 1935

RICKERT RICE MILLS, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

A. B. DORE, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

UNITED RICE MILLING PRODUCTS CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

BATON ROUGE RICE MILL, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

T. SIMON, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

LEVY RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

FARMERS RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

NOBLE-TROTTER RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT

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In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 577

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35128—35——1

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No. 581

T. SIMON, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana

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No. 585

LEVY RICE MILLING CO., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana

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No. 586

FARMERS RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana

No. 587

NOBLE-TROTTER RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana

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ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The United States District Court for the Eastern District of Louisiana, New Orleans Division, rendered no opinion. (No. 577, R. 79–80; No. 578, R. 78–79; No. 579, R. 78–79; No. 580, R. 78–79; No. 581, R. 78–79; No. 585, R. 37; No. 586, R. 78–79; No. 587, R. 78–79.) The order and *per curiam* opinion of the Circuit Court of Appeals for the Fifth Circuit denying the petitioners' motion for preliminary injunctions (No. 577, R. 93; No. 578, R. 93–94; No. 579, R. 93–94; No. 580, R. 93–94; No. 581, R. 93–94; No. 585, R. 51–52; No. 586, R. 93–94; No. 587, R. 93–94) have not been officially reported.

JURISDICTION

These cases were consolidated for hearing in the District Court (No. 577, R. 58). The judgments

and decrees of the District Court were entered October 28, 1935 (No. 577, R. 79; No. 578, R. 78; No. 579, R. 78; No. 580, R. 78; No. 581, R. 78; No. 585, R. 37; No. 586, R. 78; No. 587, R. 78). Motions for preliminary injunctions pending appeal were filed in the Circuit Court of Appeals November 4, 1935, in all the cases except No. 585, in which case the motion for preliminary injunction was filed on November 5. The motions for preliminary injunctions were denied November 5, 1935 (No. 577, R. 87, 93; No. 578, R. 87–93; No. 579, R. 87–93; No. 580, R. 87–93; No. 581, R. 87–93; No. 585, R. 45–51; No. 586, R. 87–93; No. 587, R. 87–93). Petitions for writs of certiorari and motions for injunctions to preserve the *status quo* were filed on November 11, 1935, in cases numbered 577–581, and on November 14, 1935, in cases numbered 585–587.[1] The petitions and motions were granted November 25, 1935. The jurisdiction of this Court has been invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether a Federal District Court may enjoin the collection of processing taxes imposed by the

[1] Reference is hereinafter made to the record in case No. 577. The records, petitions for writs of certiorari, and motions for injunctions to preserve the *status quo* in Nos. 577–

Agricultural Adjustment Act as amended, notwithstanding the provisions of Section 21 (a) of that Act, and Section 3224 of the Revised Statutes.

2. Whether the processing taxes imposed upon the petitioners by the Agricultural Adjustment Act as amended constitute a valid exercise of the powers of Congress under the Constitution.

STATUTES INVOLVED

The pertinent provisions of the statutes involved are set forth in Part A of the Appendix.

STATEMENT

The petitioners, all of whom are rice processors, filed bills of complaint in equity in the United States District Court for the Eastern District of Louisiana, New Orleans Division, against the respondent, Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, to restrain and enjoin him temporarily and permanently from assessing or collecting any processing tax levied for the month of September 1935, and for subsequent months, under and pursuant to the Agricultural Adjustment Act, as amended August 24, 1935, together with any interest or penalty or imposition of liens (R. 2–26).

The bills of complaint alleged, *inter alia,* that the Agricultural Adjustment Act and its provisions for

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581 and Nos. 585–587, except as to dates and amounts, are substantially identical except as to certain matters not material.

imposing the processing taxes are an attempt by the United States to regulate the production of rice and other agricultural commodities, which is beyond the scope of the powers vested in Congress and violates the Tenth Amendment (R. 12); that the processing taxes were not levied under the taxing power of the United States (R. 13); that the provision for their levy, assessment, and collection violates the provisions of the Fifth Amendment by taking the property of one class of citizens, not for a public purpose but for a private purpose (R. 13); that the Act involves an invalid delegation to the Secretary of Agriculture of powers vested exclusively in Congress by the Constitution (R. 14); that if construed as direct taxes they violate Article I, Section 9, Clause 4, and Article I, Section 2, Clause 3 of the Constitution (R. 14), and that they are not excises and violate the uniformity clause of Article I, Section 8, Clause 1 (R. 14); that the taxes cannot be levied under Article I, Section 8, Clause 3, regulating commerce (R. 14); that the payment of the tax will cause irreparable injury to the petitioners (R. 15–16) and that they have no adequate remedy at law by virtue of Section 21 (d) of the Agricultural Adjustment Act (R. 16–21).

On October 28, 1935, the respondent filed a return to the rule to show cause why the temporary injunctions should not issue, denying the allegations of the bills of complaint other than those re-

lating to his identity as defendant, and averring that the proceeding should be dismissed for the reason that the court had no jurisdiction (R. 56). On the same day the respondent filed a motion to dismiss, alleging, *inter alia,* that Section 3224 of the Revised Statutes and Section 21 (a) of the Agricultural Adjustment Act prohibited the maintenance of any suit for the purpose of restraining the assessment and collection of processing taxes; that the bills of complaint set forth no facts which entitled the petitioners to the relief asked for in a court of equity and that the petitioners had an adequate remedy at law (R. 54).

The petitioners' prayers for preliminary injunctions and the respondent's motion to dismiss were heard by the District Court on October 28, 1935, on which date that court denied the applications for preliminary injunctions, granted the motion to dismiss the bills and entered final decrees dismissing said bills (R. 79–80).

On October 29, 1935, the District Court denied motions for injunctions upon appeals (R. 80), but allowed petitioners appeals to the Circuit Court of Appeals for the Fifth Circuit (R. 81–84). The praecipes for the records on appeal were filed in the Circuit Court of Appeals October 31, 1935 (R. 84). On November 5, 1935, the petitioners' motions for preliminary injunctions pending appeal were denied by the Circuit Court of Appeals (R. 93).

In denying said petitions the court entered a *per curiam* opinion and order in each case, stating that the court was of the opinion that the taxpayers had a remedy at law to recover any taxes illegally exacted, and further that the provisions of the Act as amended deprived the court of jurisdiction to grant injunctive relief (R. 93).

The appeals from the final judgment of the District Court are still awaiting hearing in the Circuit Court of Appeals. On November 11, 1935, in cases numbered 577–581, and on November 14, 1935, in cases numbered 585–587 the petitioners filed in this Court their petitions for writs of certiorari and at the same time filed their motions for injunctions to preserve the *status quo*.

SUMMARY OF ARGUMENT

The prohibition of Section 3224 of the Revised Statutes is made applicable to taxes imposed under the Agricultural Adjustment Act, as amended, by Section 21 (a). Under these provisions the Federal courts are without jurisdiction to restrain or impede the collection of processing taxes. The instant cases do not present any of the situations in which this Court has recognized the prohibition of Section 3224 as being inapplicable.

Section 21 (d) of the Agricultural Adjustment Act, as amended, is a Congressional recognition of the equitable doctrine of unjust enrichment; this doctrine has been recognized and applied both by

the legislative and judicial branches of the Government; and the burden of proof is merely placed upon the person having peculiar knowledge of the facts. It does not deny the petitioners an adequate remedy at law.

No impossible burden of proof is placed on rice processors by Section 21(d). The allegations of fact in the petitioners' bills which were admitted by the motions to dismiss, relate in general to the method of conducting the rice processing business and the method of purchase of the rough rice and the sale of the product. They fail to establish the conclusion that the cost of the product cannot be determined or that it is impossible for the rice miller to prove whether the burden of the tax was shifted. The method of conducting the rice processing business is no more involved than that in many other businesses in which it is possible by modern accounting methods to trace all costs into the product. That it is possible in rice processing is evidenced by the nature of the proof required to recover a refund of tax with respect to rice exports and the fact that numerous such refunds have been made, and further by the agreement of the petitioners, among other millers, to keep such books and records as would demonstrate compliance with the provisions of the "marketing agreement" with the Secretary of Agriculture.

If, as we contend, all costs and the tax can be traced into the product, then the question whether

the burden of the tax was shifted becomes a matter of legal theory which can safely be entrusted to the courts, and there is no impossibility of proof. The matter is no more difficult than in *United States* v. *Jefferson Electric Co.*, 291 U. S. 386. The petitioners' allegations do not demonstrate inadequacy of the remedy but merely emphasize difficulties of proof.

Nor is the remedy rendered inadequate by the fact that no trial *de novo* is granted in the District Court.

Section 21 (d) does to a certain extent remove all necessity for a jury trial by limiting the issues before the District Courts. It is not clear whether this provision removes all fact questions, or merely the question whether the tax has been passed on or back, from determination by a jury.

Under either interpretation the same procedure has been tried and not been found wanting in due process, in customs cases.

Under present conditions, where the collector is obliged to pay over all collections into the Treasury and payment under protest has ceased to be a condition precedent to recovery of taxes paid, there is no basis for a common-law action against the collector. As this Court has held, the remedy is purely statutory and denial of trial by jury and other changes in the method of procedure may be made.

The judicial review provided in this case is adequate, since all questions of law may be raised in the

District Court, including the question whether the Commissioner's findings are supported by substantial evidence. The judicial review is similar to that afforded in cases coming from the Board of Tax Appeals, the Interstate Commerce Commission, the Federal Trade Commission, and reviews of determination of the Secretary of Agriculture under the Packers and Stockyards Act.

Due process of law is not necessarily judicial process. That is particularly true in the field of Federal taxation. An administrative hearing alone is often sufficient to constitute due process and an administrative hearing on the facts, coupled with a judicial hearing on all questions of law, such as is provided here, clearly satisfies all requirements of that clause.

If upon suit for refund it is demonstrated that Section 21 (d) affords no remedy, it would be invalid and the petitioners will have an adequate remedy under the remaining administrative provisions free from the limitations of Section 21 (d).

The taxes imposed by the Agricultural Adjustment Act, as amended, are constitutional. The constitutional objections here made are substantially the same as those presented in *United States* v. *William M. Butler et al.*, No. 401, Present Term. In the Government's brief in that case it is shown that the original Agricultural Adjustment Act is a valid exercise by Congress of its taxing and fiscal powers. The arguments there made are applicable

here. The only difference between that case and this arises by virtue of the amendments of March 18, 1935, and August 24, 1935. These amendments raise new issues relating principally to the question of whether legislative authority has been delegated to the Secretary of Agriculture. The amendments operate to remove the basis of most of the contentions urged in the *Butler* case on the question of delegation. By these amendments Congress imposed a specific rate of tax on the processing of rice and fixed the effective date and period of the tax. The administrative duties relating to the adjustment in the rate are circumscribed. These duties have never been exercised, consequently petitioners are not in a position to object to the adjustment provisions. In any event these provisions contain no abdication of legislative authority, and even if they did, they are separable from the rest of the Act and petitioners have not been injured thereby.

ARGUMENT

While the orders of the court below denying a preliminary injunction pending appeal were interlocutory, the petitioners allege that they were determinative of the whole case, since they were predicated upon the theory that the petitioners have a remedy at law and that the provisions of the Agricultural Adjustment Act, as amended, deprived the court of jurisdiction. The petitioners seek to have this Court review the orders of the District Court dismissing the bills for injunction. We con-

tend that this action of the District Court was correct, since that court is expressly prohibited by law from granting the injunctive relief sought. The various aspects of the questions involved in these cases have been discussed in a number of cases in the lower Federal courts. For the convenience of the Court these opinions have been collected and the points passed upon have been noted in Part G of the Appendix.

I

The Petitioners Are Not Entitled to the Injunctive Relief Sought

(A) The Maintenance of These Suits Is Prohibited by Section 3224 of the Revised Statutes and Section 21 (a) of the Agricultural Adjustment Act, as Amended

By these suits the petitioners seek to enjoin the collection of processing taxes imposed upon the processing of rough rice by the Agricultural Adjustment Act, as amended. The maintenance of these suits is prohibited by Section 21 (a) of the Agricultural Adjustment Act, as amended, which provides that:

> No suit, action, or proceeding * * * shall be brought or maintained in any court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment.

This subdivision of the Act makes the prohibition contained in Section 3224 of the Revised Statutes [2] specifically applicable to the processing taxes imposed by the Agricultural Adjustment Act, as amended.

This prohibition against an injunction must be considered in the light of the traditional policy governing the collection of taxes because it is but an integral part of the system of taxation embraced under, and established pursuant to, that policy. The policy is so well established by decisions of this Court as to require but brief mention. Taxes are "the sole means by which sovereignties can maintain their existence." *Bank of Commerce* v. *Tennessee,* 161 U. S. 134, 146. Summary collection is necessary so that funds may be always available to defray public expenses. For, as stated in *Bull* v. *United States,* 295 U. S. 247, 259, "taxes are the lifeblood of government, and their prompt and certain availability an imperious need." To meet that need it is essential that taxpayers be required to pay first and litigate later. It is upon this principle that the whole scheme of Federal taxation rests, and upon which it has rested since the founding of the Government. As stated in *Phillips* v. *Commissioner,* 283 U. S. 589, 595, "The right of the United States to collect its internal revenue by summary administrative proceedings

[2] See Part A of the Appendix.

has long been settled."[3] Section 3224 was enacted by the Congress for the frank purpose, as has been recognized by this Court, of removing from the judicial branch of the Government the general power to stop or impede the collection of taxes. *Cheatham* v. *United States,* 92 U. S. 85, 89.

Prior to the enactment in 1867 of the statutory predecessor of Section 3224,[4] this Court, in recognition of the general equity rule, had recognized the impropriety of interfering with the assessment and collection of taxes. See *Miller* v. *Nut Margarine Co.,* 284 U. S. 498, 509; *Hannewinkle* v. *Georgetown,* 15 Wall. 547, citing with approval, *Moors* v. *Smedley,* 6 Johns. Ch. 28. Likewise, this Court has sustained and given effect to Section 3224 in every case where an injunction has been sought to prevent the collection of a Federal tax. *Graham* v. *Du Pont,* 262 U. S. 234; *Bailey* v. *George,* 259 U. S. 16; *Dodge* v. *Osborn,* 240 U. S. 118, 121; *Snyder* v. *Marks,* 109 U. S. 189, 191. See *Miller* v. *Nut Margarine Co., supra.* Cf. *Florida* v. *Mellon,* 273 U. S. 12; *Dodge* v. *Brady,* 240 U. S. 122. It is true, as this Court pointed out in the *Nut Margarine* case, *supra* (pp. 509–510), that the statute does not operate as an absolute prohibition in cases involving extraordinary and exceptional circum-

[3] See *Dows* v. *City of Chicago,* 11 Wall. 108; *State Railroad Tax Cases,* 92 U. S. 575, 613; *Springer* v. *United States,* 102 U. S. 586, 593, 594; *Dodge* v. *Osborn,* 240 U. S. 118, 120; *Nichols* v. *United States,* 7 Wall. 122.

[4] The Act of March 2, 1867, c. 169, 14 Stat. 471, 475.

stances. It is within that exception that the petitioners seek to bring these cases. This necessitates an examination of the exceptions established by the decisions of this Court as well as the situations which have been declared not to be extraordinary and exceptional.

The present suits are not comparable in any way to the situations in which the statute has been held inapplicable by this Court. These cases may be put in three classes. First are those in which the tax is construed to be a criminal penalty in the nature of a fine. *Lipke* v. *Lederer*, 259 U. S. 557; *Regal Drug Co.* v. *Wardell*, 260 U. S. 386. In that situation the constitutional guarantees against inflicting criminal punishment without hearing, information, indictment, trial by jury, etc., require that Section 3224 be construed as inapplicable. Clearly, the present cases cannot fall within that category. Congress has not designated certain conduct as criminal, with a "tax" in case the statutory mandate is violated. *Lipke* v. *Lederer*, *supra*, did not hold that a tax which may be invalid as an attempted regulation is without the scope of Section 3224, for *Bailey* v. *George*, *supra*, which had been decided only three weeks before, had settled that question differently by holding that the collection of an unconstitutional tax could not be enjoined. There is no suggestion in *Lipke* v. *Lederer* that *Bailey* v. *George* was being overruled.

The second exception to the operation of Section 3224 involves the cases in which a stockholder was allowed to enjoin his corporation from paying the tax in a manner such that there could be no suit to recover it. *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429; *Brushaber* v. *Union Pacific R. R.*, 240 U. S. 1; *Stanton* v. *Baltic Mining Co.*, 240 U. S. 103. The theory underlying Section 3224 is that a taxpayer is fully protected by paying the tax under protest and bringing suit for refund. But a stockholder cannot pay his corporation's taxes and sue for a refund; his interest can be protected only through the corporation. In the above cases, however, the corporations were threatening to pay the taxes *voluntarily,* and under existing law there could be no suits for refund.[5] See *Reinecke* v. *Peacock,* 3 F. (2d) 583, 586 (C. C. A. 7th), certiorari denied, 268 U. S. 699; *Gouge* v. *Hart,* 250 Fed. 802, 804-805 (W. D. Va.), appeal dismissed, 251 U. S. 542. The inapplicability of Section 3224 rested therefore upon the ground that the alternative remedy at law contemplated by Section 3224 was impossible. Unless petitioners have no other remedy in the present cases, which, as will be shown below (pp. ———), is not the fact, the present cases obviously do not fall within this category.

[5] It was not until Section 1014 of the Revenue Act of 1924, c. 234, 43 Stat. 253, amended Section 3226, Revised Statutes, that suits for refund could be maintained whether or not the tax had been paid under protest. See *Moore Ice Cream Co.* v. *Rose*, 289 U. S. 373.

The third exception to the operation of Section 3224 is the situation in which the hardship on the particular taxpayer is so great, and the circumstances of the case are so extraordinary, that relief is allowed. *Miller* v. *Nut Margarine Co.*, 284 U. S. 498. Cf. *Hill* v. *Wallace*, 259 U. S. 44. In the *Nut Margarine* case no tax was imposed by law upon the article sought to be taxed. Several Federal district courts had so held, and no appeal had been taken from those decisions. Failure to grant the injunction would have resulted in the complete ruin of the taxpayer and would have destroyed a business built up on the assurance of the taxing authorities that its products were in fact exempt from the tax.

Finally, it should be noted that *Hill* v. *Wallace*, 259 U. S. 44, in no manner limits the scope of Section 3224. There the bill alleged that the directors of the Board of Trade were about to apply to the Secretary of Agriculture for designation as a "contract market." Such a designation would have avoided the tax. The suit, brought by members who objected to the conditions imposed by the Act upon contract markets, was not one to enjoin the payment of a tax, for the directors were proposing to render the transactions tax exempt. Section 3224, designed to expedite revenue collections, was plainly inapplicable.

Moreover, although the tax in *Hill* v. *Wallace* was held invalid as an unconstitutional regulation, it is

clear that the failure to apply Section 3224 did not turn upon that fact, for *Bailey* v. *George, supra,* in which a similar allegation with regard to the child-labor tax was made, was decided upon the same day and held Section 3224 applicable.

The Court has never defined the "special and extraordinary circumstances" which will remove a suit from the prohibition of Section 3224. However, if the facts of the *Nut Margarine* case, or *Hill* v. *Wallace,* may be taken as typical of such circumstances, it is clear that the present suits do not fall in that category, and that the petitioners should be restricted to their remedy of paying the taxes levied under the Act, and contesting their validity by suits for refund under Section 21 (d) of the present Act.

In view of the foregoing discussion, it is submitted that the petitioners have not brought these cases within any established or permissible exceptions to Section 3224.

One of the grounds relied upon by petitioners as showing extraordinary and exceptional circumstances is the contention that the provisions of the Agricultural Adjustment Act, as amended, are unconstitutional (Br. 39). We will demonstrate, herein below, that this contention is clearly erroneous. However, unconstitutionality of the taxing provisions is no ground for injunctive relief. In *Bailey* v. *George, supra,* this Court held that Section 3224 forbade an injunction to prevent the col-

lection of the child labor tax, even though on the same day, in the *Child Labor Tax Case,* 259 U. S. 20, the same statute was held unconstitutional. In *Snyder* v. *Marks,* supra, the Court stated (p. 192):

> There is, therefore, no force in the suggestion that Section 3224, in speaking of a "tax", means only a legal tax; and that an illegal tax is not a tax, and so does not fall within the inhibition of the statute, and the collection of it may be restrained.

It is clear, therefore, that neither the invalidity of a tax nor the unconstitutionality of the Act imposing it may be tested in a suit to enjoin the collection thereof. See also, *Dodge* v. *Osborn, supra.* Cf. *Phillips* v. *Commissioner, supra.*

The petitioners further urge in support of the equity jurisdiction of the courts that recovery of the processing taxes, if paid, will result in a multiplicity of suits; that there has been no appropriation for payment of any refunds determined by the courts to be due; that Section 21 (d) of the Agricultural Adjustment Act, as amended, has never been interpreted by the courts; and the existence of a possible liability for civil and criminal penalties provided by Section 19 (b) of the Act, as amended (Br. 28–29).

These contentions are without merit. Petitioners have not set up any facts, other than mere general allegations, to show how a multiplicity of suits will occur. The provisions for suit to recover Fed-

eral taxes erroneously or illegally collected, including the processing taxes, do not give rise to a multiplicity of suits of the character which equity will intervene to prevent. See *Dodge* v. *Osborn,* 240 U. S. 118; *Dodge* v. *Brady,* 240 U. S. 122; *City of Seattle* v. *Poe,* 4 F. (2d) 276 (W. D. Wash.); *French Mortgage & Bond Co.* v. *Woodworth,* 38 F. (2d) 841 (E. D. Mich.); and *Fisher Flouring Mills Co.* v. *Vierhus,* 78 F. (2d) 889, 893 (C. C. A. 9th). While returns must be made and the tax paid monthly, it is not necessary for a separate suit to be brought for each monthly payment. Except in the event the Agricultural Adjustment Act is adjudged unconstitutional (in which event refund claims must be filed and suit brought within the time specified in Section 21 (d) (2)), taxpayers have four years from date of payment in which to file their refund claims and two years from the Commissioner's rejection thereof in which to bring suit. Section 19 (b), and Revised Statutes, Section 3220, and Section 3228 as amended by Section 1106 (a) of the Revenue Act of 1932. Claims for refund under Sections 15 and 17 must be filed within one year from date of payment or one year from the date of adoption of Public No. 320 on August 24, 1935. See Section 21 (b). One suit may be brought for the recovery of all taxes not barred by the statute of limitations. *Fisher Flouring Mills Co.* v. *Vierhus, supra.* This is common practice in suing for recovery of Federal taxes

collected periodically, including manufacturers' excise taxes. Cf. *United States* v. *Jefferson Electric Co.*, 291 U. S. 386.

The cases cited by petitioners (*Wilson* v. *Ill. So. Ry.*, 263 U. S. 574; *Raymond* v. *Chicago Traction Co.*, 207 U. S. 20) involve state taxes and are not in point. This Court did not sustain equity jurisdiction in those cases solely upon the ground that a multiplicity of suits would otherwise result. Furthermore, it is clear from those cases that the multiplicity of suits which equity will intervene to prevent is a number of suits by or against different individuals in different forms arising out of the same transaction. Cf. *Hill* v. *Wallace*, 259 U. S. 44. Equitable relief against a multiplicity of suits should be given only if the petitioner is threatened with continuous and vexatious litigation (*Boise Artesian Water Co.* v. *Boise City*, 213 U. S. 276; *United States* v. *Bitter Root Co.*, 200 U. S. 451; *Hale* v. *Allinson*, 188 U. S. 56), and not when the number of suits is within the complete control of the petitioner himself and no hardship will result from combining all his claims in one suit. (See *Matthews* v. *Rodgers*, 284 U. S. 521, 529–530.)

No facts are alleged which would bring these cases within this Court's decision in *Stewart Dry Goods Co.* v. *Lewis*, 287 U. S. 9, where it appeared that there might be no funds with which to [illegible] a judgment. In view of Section 989 of the Revised

Statutes (U. S. C., Title 26, Sec. 842), and the provisions of law (Act of April 27, 1904, c. 1630, Sec. 1, 33 Stat. 394, 422; U. S. C., Title 31, Sec. 583 (2)) requiring that estimates be submitted to Congress for appropriations to pay judgments against the United States, there is no justification for granting equitable relief on the ground that no appropriation has been made to cover refunds of processing taxes erroneously collected. Furthermore, it would seem that any such contention is premature in view of the fact that the Act has not been declared unconstitutional.

Likewise, the cases relied upon in support of the argument that relief should be granted because Section 21 (d) of the Act has not been construed are not in point. The cases cited (*Atlantic Coast Line* v. *Daughton,* 262 U. S. 413; *Union Pac. R. R. Co.* v. *Weld County,* 247 U. S. 282), as well as several others which may be mentioned, involve the application of State law, and indicate that this Court will not attempt a construction of a State statute which admittedly would not be binding upon the State court. The situation is entirely different where the construction of a Federal statute is involved. Section 21 (d) of the Act is to be construed by the Federal courts and not by any State court. If the District Court is going to be permitted to take jurisdiction on the ground that there is no adequate remedy at law, it must first construe Section 21 (d) to deny an adequate remedy, and it

cannot properly do so except in a suit for refund. If its validity in any particular cannot be sustained in such a suit, taxpayers will not be required to comply with the objectionable provisions.

The penalties to which taxpayers are subjected by the provision of Section 19 (b) of the Act are the same as the penalties prescribed for failure to file returns and for the filing of false or fraudulent returns in the case of other excise taxes. They can all be avoided by complying with the provisions requiring the return and payment of taxes and do not present any ground for equitable jurisdiction or injunctive relief. *Fisher Flouring Mills Co.* v. *Vierhus, supra* (p. 892). The cases cited in support of this argument are not in point. In *Ex parte Young,* 209 U. S. 123, the objectionable penalties were criminal penalties imposed for refusing to comply with a State law regulating transportation rates. *Wallace* v. *Hines,* 253 U. S. 66, was a case involving taxes imposed upon railroads by the State of North Dakota. The opinion does not indicate the nature of the penalties imposed for failure to pay, but merely indicates that since the tax was made a first lien upon the taxpayer's property, it cast a cloud upon the title, and that fact, plus the fact that penalties were imposed for delay in payment, was sufficient to give the Federal courts equity jurisdiction.

It is clear that Section 21 (a) is but a specific application of the prohibition of Section 3224 to the

taxes imposed under the Agricultural Adjustment Act, subsequent to the amendment thereof by the Act of August 24, 1935. Therefore, it removes any doubt, if any existed, as to the applicability of Section 3224 to the present cases. This statute is not out of line with the construction placed upon Section 3224 by the courts. Cf. *Stafford Mills* v. *White,* 41 F. (2d) 58 (Mass.); *Czieslik* v. *Burnet,* 57 F. (2d) 715 (E. D. N. Y.) See also *Howland* v. *Soule,* Fed. Cas. No. 6800 (C. C. Calif.); *United States* v. *Pacific Railroad,* Fed. Cas. No. 15983 (C. C. E. D. Mo.); *Miles* v. *Johnson,* 59 Fed. 38 (C. C. Ky.); *Waldron* v. *Poe,* 1 F. (2d) 932 (W. D. Wash.); *Staley* v. *Hopkins,* 9 F. (2d) 976 (N. D. Tex.); *Ralston* v. *Heiner,* 24 F. (2d) 416 (C. C. A. 3d); *Calkins* v. *Smietanka,* 240 Fed. 138 (N. D. Ill.); *Black* v. *Rafferty,* 287 Fed. 937 (E. D. N. Y.).

(B) Section 21 (d) of the Agricultural Adjustment Act, as Amended, Does Not Deprive Petitioners of a Plain, Adequate, and Complete Remedy at Law

Petitioners strongly urge that Section 21 (d) of the Act, as amended, deprives them of an adequate remedy at law and thereby creates such extraordinary and exceptional circumstances as to justify injunctive relief. That subdivision provides in substance that no recovery shall be allowed of the amount of any tax imposed by the Agricultural Adjustment Act unless it shall be established to the satisfaction of the Commissioner that the claimant has not directly or indirectly included that amount

in the price of the article with respect to which it was imposed, or of any article processed therefrom, or passed on any part of such amount to the vendee, or included any part in the processing fee, and that the price paid by the claimant was not reduced by any part of such amount, and further provides the procedure for the hearing before the Commissioner and a court review thereof.

We will show (1) that Section 21 (d) merely adopts the equitable principle of unjust enrichment; (2) that it does not impose an impossible burden of proof upon rice processors; (3) that it does not deprive such processors of an adequate remedy at law by the fact that no trial *de novo* is granted by the District Court, and (4) even if the section were invalid on any of these grounds, nevertheless petitioners would have an adequate remedy at law under Section 3226 of the Revised Statutes and related provisions. These points will be discussed in the order named.

1. This statute is a Congressional recognition and application of the equitable doctrine of unjust enrichment

The Agricultural Adjustment Act has always contained adequate provisions for the administrative consideration of claims for the refund of processing taxes alleged to have been illegally exacted and for suit at law in the event of rejection of such claims for refund in whole or in part. Section 19 (b), by reference to Section 600, Revenue

Act of 1926, c. 27, 44 Stat. 9, and Section 626, Revenue Act of 1932, c. 209, 47 Stat. 169, makes applicable Sections 3220, 3226, and 3228 of the Revised Statutes, as amended (Part A of the Appendix), and affords to taxpayers under the Act all of the remedies which any taxpayer has ever had for the recovery of taxes erroneously or illegally collected. Section 21 (d) has not deprived the petitioners of any of these remedies but has only added an additional element to the right to a refund, and in line with precedent, has required the claimant to show that he is justly entitled to repayment of the exaction.

Processing taxes are usually either passed on to the ultimate consumer or back to the producer.[6] This is apparently true of the processing tax on rice. An examination of the average farm price for rough rice during the months of April to No-

[6] The processing tax imposed by the Agricultural Adjustment Act upon basic agricultural commodities and competing commodities is an excise as that term is used and applied in our system of Federal internal revenue taxation. See pp. 29–32 in the Government's brief in *United States* v. *William M. Butler*, et al., No. 401, Present Term. One of the recognized characteristics of excise taxes (also known as indirect taxes) is that while they are imposed in the first instance upon the dealer, producer, or manufacturer, the economic burden of the levy can be, and generally is, shifted to the ultimate user or consumer. This characteristic of excise taxes is widely discussed and generally agreed upon by leading economists and text writers. See Marshall, "Principles of Economics" (8th Ed.), pp. 413–414; Seligman, "Incidence of Taxation" (1927), pp. 23, 30–62, 77–78, 217–254, 339–355; and "Studies in Public Finance" (1925),

vember, 1935, inclusive, and of the "spread" between prices paid the rice producer and those received upon the sale of the standard product, strongly indicates the fact that the tax was actually in part taken out of the producer and in part passed on to the consumer. A study of the market prices of "Fancy Blue Rose Rice" in connection with prices paid producers for Louisiana rice is used for the purpose of this examination. (See Tables I to III of Part E of the Appendix.) "Blue Rose Rice", in 1933, the last year for which there are published statistics in this respect, comprised about 66 per cent of the southern production and 84 per cent of the Louisiana production of all rice. "Fancy Blue Rose" is the most important standard grade of "Blue Rose" rice. The tables referred to show the following: The range of the monthly spread between the price per 100 pounds of

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p. 136; Taussig, "Principles of Economics" (3d Ed., 1930), Vol. II, c. 71; Adams, "Science of Finance" (1899), pp. 383–393; Brown, "The Economics of Taxation" (1924), c. III and IV; Paton, "The Pro and Con of a Sales Tax", Vol. II, p. 368; Green, "Theory and Practice of Modern Taxation" (1933), pp. 130–132; Burton, "The Sales Tax" (10th Ed., 1927). See also Hearings Before the Finance Committee of the United States Senate on the Revenue Bill of 1921, pp. 418, 466. All of the economic authorities cited by the petitioners in Appendix E to their brief recognize the tendency to shift the burden of indirect taxes. The "acrimonious debate" among economists referred to by the petitioners (Br. 19) is directed not so much to the shifting of the burden of taxes as it is to the determination of the ultimate incidence.

"Fancy Blue Rose" at New Orleans, Louisiana, and the farm price per barrel of 162 pounds of Louisiana rice is as follows:

Crop year August-July	Low	High
1928-1929	$0.54	$1.05
1929-1930	.41	.97
1930-1931	.72	1.33
1931-1932	.34	1.43
1932-1933	.39	.78
1933-1934	.95	1.17
1934-1935	.43	1.18
1935-1936 (August-November)	1.41	2.37

Statistics provided by the industry show that 162 pounds of rough rice will produce 100 pounds of head rice and 13 pounds of broken rices. It is obvious that the processor cannot stay in business and pay a tax of $1.62 per barrel of rough rice out of a spread running between $.34 per 100 pounds and $1.43 per 100 pounds of head rice produced therefrom, nor can the balance be made up out of 13 pounds of a cheaper byproduct. He must do one of two things: Either pay less for his rough rice (take the tax out of the price to the producer) or sell the clean rice for a higher price (pass the tax on to the consumer). The available data indicate that, in the case of rice and its products, the processor has in part taken the processing tax out of the price paid the producer and has in part passed the tax on.

On the fifteenth of April, May, June, and July, 1935, the average farm price for rough rice in Louisiana was $3.10, $3.13, $3.24, and $3.17, per bar-

rel of 162 pounds, respectively. On August 15, in anticipation of the tax, the price dropped to $2.66 per barrel, and in September the farm price was $1.73 per barrel. The farm price for October and November has been $1.98 and $2.34 per barrel, respectively. (See Table I, Part E of the Appendix.)

With respect to the passing on of the tax, the data show that after April 1, 1935, the effective date of the processing tax on rice, when the spread was $.66, and partly in anticipation of the effectiveness of the tax in September, the spread began to increase. From April 1 to September 1 virtually no tax was collected, since tax-payment warrants had been issued to cover all rice produced in the 1933 and 1934 crops. (Cf. Section 15 (b–1), (b–2), Agricultural Adjustment Act, as amended. See Compilation from the monthly reports of the Bureau of Internal Revenue to the Agricultural Adjustment Administration, periodically published by the Agricultural Adjustment Administration, Part C of the Appendix.) Consequently, the New Orleans price would not have reflected the tax during that period. But beginning September 1st, the tax began to be paid in substantial amounts on the 1935 crop and immediately the spread increased the full difference between the April spread of $.66 and the same spread plus the tax. The spread for September was $2.37 and for October $2.30. Such a spread between the price of clean and rough rice

is obviously an unusually wide spread. It is a reasonable inference, therefore, to conclude that the change from April 15 to September 15 resulted from imposition of the tax.

Thus we have a situation where the persons subject to the tax are able to, and generally do, reimburse themselves for the taxes paid.[7] Section 21 (d) is an effort to deal with this situation in an equitable and just manner.[8] The petitioners would, if their contentions should prevail, be unjustly enriched to the extent of any taxes passed on or back. After having paid the tax and secured reimbursement from the producers or consumers, they would then recover back from the Government the amount of the tax paid. Hence, instead of being hurt by the tax, processors would become a favored class at the expense of producers and consumers to the extent of the amount of the tax. The amount re-

[7] In *Texas Co.* v. *Brown*, 258 U. S. 466, 479–480, this Court took occasion to remark:

> The self-interest of the dealer and the customs of trade are relied upon to add the tax to the price of the product, and thus pass it on to the ultimate consumer—a method appropriate in indirect taxation, and certainly a not unreasonable mode of distributing the burden among those who share in the benefits.

[8] The object of Congress in limiting refunds by Section 21 (d) to that portion of the tax actually borne by the processor is clear. As stated in the report of the conferees (H. Rep. No. 1757, 74th Cong., 1st Sess., p. 32): "This provision embodies a doctrine that no taxpayer should be unjustly enriched by a return of the tax if, in fact, he has not borne it."

covered from the Government would be a windfall. Nevertheless, the effect of the petitioners' contentions would be to declare invalid or inapplicable a statute which has the effect of requiring processors to demonstrate by proof the fact that they have absorbed the tax and, consequently, have not been unjustly enriched.

The doctrine of unjust enrichment is not novel and is one of general application. Cf. *Brooks* v. *Martin,* 2 Wall. 70. It has been applied by the courts in the absence of any statute embodying the doctrine. This Court applied it in *Perry* v. *United States,* 294 U. S. 330. In that case the Court said (pp. 357–358) that:

> Plaintiff has not shown, or attempted to show, that in relation to buying power he has sustained any loss whatever. On the contrary, in view of the adjustment of the internal economy to the single measure of value as established by the legislation of the Congress, and the universal availability and use throughout the country of the legal tender currency in meeting all engagements, *the payment to the plaintiff of the amount which he demands would appear to constitute not a recoupment of loss in any proper sense but an unjustified enrichment.* (Italics supplied.)

The doctrine was likewise in effect applied in *White* v. *Stone,* 78 F. (2d) 136 (C. C. A. 1st), certiorari denied October 14, 1935; *Champ Spring*

Co. v. *United States,* 47 F. (2d) 1 (C. C. A. 8th), certiorari denied, 283 U. S. 852; *State* v. *Canfield Oil Co.,* 34 Ohio App. 267, 275. See Field, The Effect Of An Unconstitutional Statute (1935), pp. 254–255. The doctrine has been applied in construing statutes. *People* v. *Ventura Refining Co.,* 204 Cal. 286. See *Standard Oil Co.* v. *United States,* 5 F. Supp. 976, 985 (C. Cls.), certiorari denied, 293 U. S. 599. Cf. *Lewis* v. *Reynolds,* 284 U. S. 281. And a statute embodying the doctrine was upheld by this Court in *United States* v. *Jefferson Electric Co.,* 291 U. S. 386.

This doctrine has been applied in suits in equity wherein taxpayers who have passed the taxes on to the consumers have sought to recover the amount of taxes paid the collector. In these cases the doctrine has formed the basis for holding that the complainants had not come into equity with clean hands. *Richardson Lubricating Co.* v. *Kinney,* 337 Ill. 122, 129–130; *Standard Oil Co.* v. *Bollinger,* 337 Ill. 353, 357.

Suits for the refund of taxes are governed by general equitable considerations and there is nothing novel about a statute adopting the equitable doctrine of unjust enrichment to suits for the refund of taxes paid. *United States* v. *Jefferson Electric Co., supra* (pp. 402–403). It was there pointed out that if the taxpayer had shifted the burden of a tax to the purchasers of an article, then

the taxpayer had not been an actual sufferer (p. 402). It seems clear that Section 21 (d) of the Agricultural Adjustment Act, as amended, which applies this equitable doctrine to suits for the refund of taxes paid under the Act, is not invalid. The statute clearly contemplates that a recovery may be had where the processor has himself been hurt, i. e., where the processor has borne the burden of the tax. It also seems clear that the statute has denied the right to recover to those processors who have not been hurt. It is also clear that those processors who have reimbursed themselves for the amount of the taxes paid from either the consumers or the producers have not been hurt by the exaction. In the case of this latter class of processors, the persons who have sustained loss by reason of the exaction are either the consumers, who were forced to reimburse the processors through the addition of the amount of the tax to the price of the commodities, or the producers, who received prices for their raw products which have been reduced by the amount of the tax.[9]

This is not a case of unjust enrichment as between the Government and the processors. If the

[9] Neither the consumers nor the producers would, in the absence of a statute or a specific contract to that effect, have any right of action against the processor. There is no statute giving them such a right. *Heckman & Co.* v. *I. S. Dawes & Son Co.*, 12 F. (2d) 154 (App. D. C.). See also *Williams* v. *Riley*, 280 U. S. 78; *Central Transfer Co.* v. *Commercial Oil Co.*, 45 F. (2d) 400 (E. D. Mo.); *Kastner* v. *Duffy-Mott Co.*, 125 Misc. Rep. 886, 213 N. Y. S. 128.

taxes are paid over to and retained by the Government it will not be unjustly enriched at the expense of the processors. In this respect the instant cases are quite different from *Bull* v. *United States,* 295 U. S. 247. In that case this Court held that the United States would be unjustly enriched by the retention of the tax there involved. It is obvious from the facts that the Government would have been so enriched *at the expense of and to the detriment of the plaintiff taxpayer.* If it is a question whether the Government or private individuals or corporations shall have the benefit of sums wrongfully collected from third parties under the color of a statute, the Government must prevail. This conclusion was apparently sanctioned by this Court in *Dayton-Goose Creek Ry.* v. *United States,* 263 U. S. 456, 484.

As between the Government and the processors, we submit that the Government must prevail on the ground of a plain public policy. To permit the processors to recover or retain the amount of the tax which has been passed on or back would result in the unjust enrichment of a small class of private citizens, i. e., the processors, at the expense of a vastly larger class, i. e., the producers and consumers. Of course, if the processors should prevail, the amount of the taxes would be used by them for their individual uses and benefits. On the other hand, if, as between the two, the Government should prevail, the amount of the tax would be held and

expended for Governmental purposes, which would redound to the benefit of the country as a whole. Also, if the money is retained by, or paid over to, the Government it would be possible for the Congress, should it decide to do so, to take steps to return the money to those from whom it was collected, i. e., the producers and consumers.[10] Therefore, we submit that Section 21 (d) is thoroughly justified on this ground.[11]

Under the cases above referred to, the equitable doctrine of unjust enrichment is an affirmative defense which must be raised by an appropriate pleading and proved. Aside from Section 21 (d) this defense would be available to the Government in a suit for refund brought by a processor under Section 3226 of the Revised Statutes. As has been pointed out above, Section 21 (d) is a statutory embodiment of that doctrine. However, in addition to adopting the doctrine, this statute regulates the use thereof by shifting the burden of proof from the Government. This phase of the statute is reasonable and just in that it merely places the

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[10] This type of procedure was followed by the Congress in making appropriations for the refund of excise taxes in the years 1927 and 1928. See footnote 12, *infra.*

[11] The title to the money may be supported in the Government on the ground of superior right (see *Dayton-Goose Creek Ry.* v. *United States*, *supra*) by analogy to the doctrine of escheat, which is, in itself, a rather broad doctrine in America (see 2 Minor On Real Estate (2d Ed.), p. 1151) and is largely regulated by statute (Stimson, American Statute Law, Sections 1151, 1157).

burden of proof upon the party who has peculiar knowledge of the facts and who has those facts within his control. Hence, the statute merely includes in the equitable doctrine a general, salutary, and well-settled rule of evidence. See *Selma, Rome, etc., Railroad* v. *United States,* 139 U. S. 560, 566–568. There is nothing novel about such a statute.[12] In this respect, Section 21 (d) is comparable to Section 424 of the Revenue Act of 1928 and Section 621 of the Revenue Act of 1932 (c. 209, 47 Stat. 169, 267). The provision of the Revenue Act of 1928 has been upheld and approved as an additional element of the right to a refund. *United States* v. *Jefferson Electric Co.,* 291 U. S. 386; *Jefferson Electric Mfg. Co.* v. *United States,* 10 Fed. Supp. 950 (C. Cls.); *Virginia-Carolina Rubber Co.* v. *United States,* 7 Fed. Supp. 299 (C. Cls.). The

[12] Familiar examples appear with respect to certain manufacturers' excise taxes where Congress has provided that in instances where agreements or contracts have been entered into prior to the effective date of the tax for the sale or lease of an article subject to the tax, any new or additional liability must be discharged by the purchaser, while any reduction in liability shall be recovered by the purchaser. See Revenue Act of 1917, c. 63, 40 Stat. 300, Sec. 1007; Revenue Act of 1918, c. 18, 40 Stat. 1057, Sec. 1312; Revenue Act of 1921, c. 136, 42 Stat. 227, Sec. 906; Revenue Act of 1924, c. 234, 43 Stat. 253, Sec. 605; Revenue Act of 1926, c. 27, 44 Stat. 9, Sec. 603; Revenue Act of 1928, c. 852, 45 Stat. 791, Sec. 423; Revenue Act of 1932, c. 209, 47 Stat. 169, Sec. 625, as amended by Pub. Res. No. 25, approved June 13, 1932, c. 246, 47 Stat. 302. For administrative recognition of this feature respecting excises, see Regulations 47, Articles

burden of proof placed on processors by Section 21 (d) is not unlike the burden of proof placed upon parties litigant in other situations. However, if this section be treated as one creating a *prima facie* presumption, it is not objectionable.[13]

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3 and 40, under the Revenue Act of 1921; Regulations 48, Article 1, under the Revenue Act of 1924; Regulations 52, Articles 8 and 34, under the Revenue Acts of 1918 and 1921; and Regulations 54, Articles 6 and 35, under Revenue Act of 1918. In making appropriations in 1927 and 1928 for the refund of internal-revenue taxes erroneously and illegally collected, Congress provided that no part of such appropriations should be available to refund any amount collected under those sections unless the taxpayer should furnish a bond conditioned upon the repayment to the Government of any amount of such refund not distributed within six months to the person who purchased for consumption the article upon which the refund was made. See c. 226, 44 Stat. 1250, 1254; c. 5, 45 Stat. 2, 30; c. 126, 45 Stat. 162, 169. These provisions were superseded by Section 424 of the Revenue Act of 1928, *supra*. See particularly H. Rep. No. 2, 70th Cong., 1st Sess., p. 27; H. Rep. No. 708, 72d Cong., 1st Sess., p. 39.

[13] For example: Proof of March 1, 1913, value is frequently necessary in order to overcome the presumption of the correctness of the Commissioner's determination in income tax cases (*Wickwire* v. *Reinecke*, 275 U. S. 101, 105); there is a presumption of death after seven years' absence unexplained and without communication (*Davie* v. *Briggs*, 97 U. S. 628, 633); presumption of negligence on proof of injury by a railroad established by State statute was approved in *Mobile, J. & K. C. R. R.* v. *Turnipseed*, 219 U. S. 35, 41. Other Federal statutes create presumptions difficult to overcome. In establishing pension claims, seven years of unexplained absence raises a *prima facie* presumption of death. Act of March 13, 1896, c. 54, 29 Stat. 57 (U. S. C., Title 38, Sec. 32). There is a presumption that all opium found in the United States is imported contrary to law, and possession of opium is *prima facie* proof of illegal transactions in

It is asserted that because of the use in Section 21 (d) of the words "any part of such amount" it must follow that a processor who is able to prove that he absorbed 99% of the tax would nevertheless be precluded from recovery because the balance was passed on. We submit that the section is not subject to such a strained construction. It is apparent from the Act that "passed on any part of such amount" and kindred phrases refer to the amount to be refunded. In other words, *any amount* which has not been passed on or passed back shall be refunded. The discussion on the floor of the Senate discloses that Congress intended that the section should be given a fair and liberal interpretation. Cong. Rec., 74th Cong. 1st Sess., Vol. 79, No. 169, pp. 13700–13702 (Part F of the Appendix). And this is the interpretation which is being given the statute by the Executive Department charged with the enforcement of the law.

2. *Section 21 (d) does not impose an impossible burden of proof.*

In support of their contention that Section 21 (d) deprives them of a remedy at law, the petitioners make certain allegations of fact concerning the method of conducting the rice processing busi-

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connection therewith. Act of January 17, 1914, c. 9, 38 Stat. 275 (U. S. C., Title 21, Sec. 174). Possession of narcotics on which the tax has not been paid is presumptive evidence of unlawful traffic in connection therewith. Act of December 17, 1914, c. 1, 38 Stat. 785, 789, Section 8 (U. S. C., Title 26, Secs. 1387–1388 (c)).

ness in general and the method of purchase of the rough rice and the sale of the product, from which they attempt to draw the conclusion that rice millers are unable in any case to determine the cost of any particular lot of their product and that it is impossible to prove whether or not the burden of the tax was shifted to the purchaser or the producer, or was borne by the miller. It is contended that by the motion to dismiss, the conclusion of inability to show the cost of the product, and the conclusion that it is impossible to prove whether or not the burden was shifted, have been admitted. But a motion to dismiss, like a demurrer, admits only facts well pleaded, and not conclusions. *Pacific States Box and Basket Co.* v. *White,* decided by this Court November 18, 1935.

We submit that the allegations of fact concerning the method of rice processing and the conditions under which the rough rice is purchased and the product sold do not establish either the conclusion that the cost of the product cannot be determined or that it is impossible to prove whether the burden of the tax was shifted. The petitioners do not predicate their argument upon the ground that there is no available evidence upon which to determine these questions, but, rather, that, given all of the available evidence, the Commissioner or a court could not reach any intelligent result. Given all the facts, we submit that any court could arrive at a fair and reasonable conclusion.

The method of conducting the rice processing business, the purchase and milling of rough rice and the sale of the product are no more involved than are the equivalent factors present in many other present-day manufacturing businesses, in which it is possible by modern accounting systems, where sufficiently exhaustive and accurate records are maintained, to trace both direct and indirect costs into the finished products.[14] The allegations of petitioners' bills bear a striking resemblance to those in *Anton Rieder* v. *Rogan, Collector* (S. D. Cal.), in which a bill to enjoin the collecting of hog processing taxes was dismissed by the District Court for the Southern District of California on October 28, 1935.[15] There the court said, in part:

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[14] Compare "Cost Accounting", by Dohr, Inghram & Love, The Ronald Press Co., N. Y., Second Revised Edition, 1935, where it is said: "General accounting procedure shows only the cost of goods sold, the cost of goods manufactured, and the cost of raw materials and supplies used in total and not in units * * *. Under the cost procedure, the records are so kept that upon the completion of each unit of product, its cost is ascertained and entered on the records. The cost reports then show such unit costs for use in the solution of administrative problems. The calculation of these unit costs forms one of the basic parts of cost accounting, the procedures being fully explained in subsequent chapters."

[15] Those allegations, as stated in the court's opinion, were as follows:

The difficulties have been stated with elaboration in the amended Bill of Complaint as a basis for the contention that the remedy provided in the statute is inadequate. In substance, they are: When paid by the plaintiffs, the taxes

One would gather from the statement of the difficulties in the amended Bill of Complaint and in the oral argument that the

become a part of the cost to them of the product which they ultimately sell to the customer. In the processing of hogs, the hogs are divided into numerous and separate portions and products, some of which are pickled and some smoked, and others go through other processes. Some are sold as fresh meat. A portion of the carcasses is converted into sausages by using pork trimmings, in the manufacturing of which, meat products are used which are free from the tax imposed by the Act. For this and other reasons, it is impossible to set up a system of accounting which would allocate the proportion or part of the processing tax on the live weight of the hog before the processing. The hogs are sold in the open market in competition with other processors and with meat products which are tax free under the Act. The processing tax is not carried as an item on the invoice and, for this and other reasons, it would be impossible to allocate any particular part of the tax or to do it accurately, and the penalties of Section 20 of the Act might be incurred. There is no provision in the Act allowing the price received by the plaintiffs upon the sale of their products to be allocated first to the reimbursement of the plaintiffs of their costs other than taxes or to be pro-rated to all costs equally. It would be impossible, from an accounting and operating standpoint, to establish in the case of any particular portion or quantity of pork products whether the tax with respect thereto was or was not passed on by the plaintiffs to their customers or to their vendors.

The Bill also states that, as an accounting and operating matter, it is likewise impossible to determine whether the tax was passed to the vendee or passed back to the vendor; that such an attempt would result in speculation and conjecture; that the processing tax is levied upon the live weight of the hog, but that the pork products, derived from the hog, are sold at variable periods varying from four to six or eight months. For these reasons, also, it is alleged, the requirements of Section 21 (d) of the Act could not be met.

difficulties are insuperable. Yet the Bill states:

> That when paid by plaintiffs said taxes become part of the cost to them of the product which they ultimately sell to their customers.
>
> It would seem to us that, with the high development of cost accounting at the present time, it should not be difficult to trace that initial cost. We take judicial notice of the fact that modern systems of accounting have become so accurate that manufacturers are able to trace, in industrial establishments of the most complex character (such as automobile plants), the approximate cost of every process or every part of process which goes into the making of the whole product. Evidence of expert cost-accountants is often received in court. That such a system might be readily applied to the proof in recovery cases is also evidenced by the fact that the Treasury Department in its circular dated January 25, 1935, denominated T. D. 4518, has set up a method of tracing processing taxes to the various products involved in hog processing. This indicates that it is possible to trace the processing tax to the various ultimate products.

We submit it is possible to trace rough rice into its product and to assign to the product its proper portion of all costs, including processing taxes paid by the miller. That this is so is evidenced by the fact that export refunds have been made and allowed under Section 17 of the Act (Part A of the Appendix), in the face of the necessity of proving payment of the tax with respect to the rice ex-

ported, and, further, by the "Marketing Agreements" to which the petitioners were parties.

Export refunds under Section 17 of the Act have been made between April 1, 1935, and October 31, 1935, in the total sum of $1,132,443.25 upon the exportation of rice with respect to which a processing tax was paid. See compilation from the Monthly Reports of the Bureau of Internal Revenue to the Agricultural Adjustment Administration, Part C of the Appendix. Articles 2 and 3 of Chapter II of Treasury Regulations 83 (Part B of the Appendix), relating to exportation under Section 17 of the Act, provide in part that the claim for refund shall be executed by the claimant on the prescribed form (P. T. Form 27); that each claim for refund shall show with respect to each export shipment the quantity of the commodity in each product with respect to which claim is made that the tax was paid, the rate of tax applicable thereto as determined by the conversion factor established in regulations of the Secretary of Agriculture,[16] and the amount of refund claimed thereon; and that each claim shall be supported by proof satisfactory to the Commissioner that the tax, refund of which is claimed, was actually paid to a collector of internal revenue.

[16] These conversion factors are set forth in T. D. 4586, promulgated by the Commissioner of Internal Revenue September 9, 1935 (Internal Revenue Bulletin, Vol. XIV, No. 37, p. 15).

It would seem to be obvious that unless rough rice and the processing tax can be traced into the product, it would be impossible to show with respect to individual export shipments that the tax on the processing of the rough rice contained therein was actually paid. Yet numerous claims for export refunds, made under oath, have been filed and have been allowed and paid. It must be concluded, therefore, that rough rice and the processing tax applicable thereto are capable of being traced into the finished product.

Persuasive evidence that all of the miller's costs can be traced into particular lots of his product and properly allocated thereto is to be found in the first Marketing Agreement for Southern Rice Milling Industry, entered into between the Secretary of Agriculture and the Industry, which Agreement is an official publication of the Department of Agriculture. (See Part D of the Appendix.) All of the petitioners herein were parties to that Agreement.

In the Agreement the millers agreed to pay the producers of rice minimum prices fixed by the Secretary of Agriculture. Article IV. They also agreed to sell the out-turn from a barrel of rough rice at minimum prices determined by adding to the cost of the rough rice, the cost of conversion, the actual cost of the container, and the Marketing Fund charge provided in the agreement. The cost of conversion was determined to be $.70 per barrel

of rough rice until it should be changed by the Control Committee, with the approval of the Secretary of Agriculture.[17] Article V. The millers were to elect a Control Committee of seven members who had the power and duty to supervise performance of the agreement. Article II. Finally each miller agreed to maintain a system or systems of accounting which should accurately reflect a true account and condition of its business. Each miller's books and records were subject to examination by the Secretary to assist him in carrying out his duties under the Agreement, including the verification of information supplied him, as well as the examination by the Control Committee in checking alleged violations of the Agreement. Article VIII. The Secretary duly fixed the minimum price of rough rice.

In determining whether a particular miller had actually complied with the Agreement, it was essential to be able to trace the clean milled rice sold back to the rough rice from which produced, that is, to check such sales against the purchases of rough rice, in order to ascertain whether the minimum purchase price had been paid and whether the minimum sales price had been obtained. The fact that the millers agreed to keep proper records to reflect these facts must lead to the conclusion that they

[17] While subsequent to the First Marketing Agreement a fixed minimum sale price was substituted for the formula contained in Article V, on July 21, 1934, following a public hearing, a substantially similar formula was adopted for determining the minimum sale price.

themselves believed that their books could be kept in such manner as to trace rough rice into clean milled rice and the clean milled rice sold back to rough rice for the purpose of determining whether the prices contemplated by the Agreement had been paid and obtained.[18]

It is reasonable to suppose that the Marketing Agreement reflects the practice of the industry and the ability of the members thereof to trace clean rice back to the particular rough rice processed; otherwise, they would not have entered voluntarily into the Agreement. The fact that the Agreement was prepared by the industry and was voluntarily submitted by the members thereof to the Secretary

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[18] That cost may be traced in the rice milling business is evidenced by testimony taken at the public hearing held at Beaumont, Texas, on August 31, 1934, relative to a reduction in the amount of the conversion charge and a proposed amendment to the amended Agreement for the Southern Rice Milling Industry pursuant to Section 8, subsection (2) of the Act. The official report of those proceedings is open to public inspection and is in the office of the Hearing Clerk of the Agricultural Adjustment Administration, Docket No. 237. In that proceeding Mr. Frank A. Godchaux, Sr., representing the Louisiana State Rice Milling Company, in discussing the proposed change in the conversion charge, stated (Tr. 72):

* * * so far as conversion is concerned they make statements here, but they do not prove them with actual figures of the mills. I can give you in the record just exactly what it costs in every department of the business, in detail, what it costs to buy rough rice, sell clean rice, and everything else, and that is the reason I thought if they would put some figures in here by the Government we could set our figures against them and stop a lot of argument.

of Agriculture for his consideration and approval, supports this conclusion.

If, as we contend, costs and the tax can be properly determined with respect to the product, then the question whether the burden of the tax was shifted within the meaning of Section 21 (d) becomes a matter of legal theory, which can properly be determined by the courts, and which involves no element of impossibility of proof.

We think it is not incumbent upon the Government, a defendant, to show these petitioners in advance of suit for refund, the manner in which they can establish their claims. The theory of proof must be developed by the courts in individual cases. It may be that the courts will hold that the tax is passed on when the selling price of the product equals its cost, plus the tax. Or the theory may be adopted that an absence of an increase in selling price of the product and an absence of a decrease in purchase price of the rough rice after the Act took effect, other costs being constant, is persuasive proof that the tax was not shifted. Or a comparison with a fair profit of pre-tax periods may possibly furnish the test.[19] But whatever test

[19] The District Court for the Southern District of Mississippi in *Meridian Grain and Elevator Co.* v. *Fly*, 12 Fed. Supp. 64, was of the opinion that the last named theory was the test. There the court said (p. 66):

To the cost of its investment, the raw material, wages, and other expenses of manufacture, it only needs to add a fair profit to arrive at a selling price, unless it desires to pass on

should be adopted, we submit that it is perfectly possible to develop a fair and reasonable theory, given a true picture of the miller's operations, his books of account and records, if properly kept, and possibly statistical studies of the trade. Cost being established, we submit that it can as well be determined whether the tax was shifted indirectly as in the case of the sales tax considered in *United States* v. *Jefferson Electric Co., supra.*

It should be noted that the three cases considered by this Court in the *Jefferson Electric Co.* case, and remanded to the respective trial courts, have all been tried again and decided. The Court of Claims found on the evidence that the taxes in the *Jefferson Electric Co.* case had been passed on to the purchaser (10 Fed. Supp. 950); the District Court of Connecticut found that the full burden of the tax had been borne by the taxpayer in the case of *American Chain Co.* v. *Hartford-Connecticut Trust Co.,* 11 Fed. Supp. 770; and the District Court for the Northern District of Ohio found in the case of the *Willard Storage Battery Co.* v. *Routzahn,* decided October 3, 1935 (not yet reported), that the taxpayer had borne the tax on some of the sales while on others the burden had

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the tax, in which event it will also add the amount thereof. If competition forces a reduction in the price to the extent of excluding the tax therefrom, this fact is easily susceptible of proof by the processor.

been shifted. Clearly, if the taxes there involved were taxes generally passed on to the purchaser, yet those particular taxpayers were able to show they had themselves borne the burden, it should not be impossible for processors to show that they had borne the burden of all or a part of the processing tax if they had actually done so.

The allegations contained in the petition, we submit, do not demonstrate the inadequacy of the remedy but merely emphasize difficulties of proof. Mere complication of facts alone and difficulty of proof are not a basis of equity jurisdiction. *Curriden* v. *Middleton,* 232 U. S. 633, 636; *United States* v. *Bitter Root Co.,* 200 U. S. 451. The mere fact that evidence is voluminous or tedious is not sufficient to permit the removal of an action from a court of law to a court of equity. *Bowen* v. *Chase,* 94 U. S. 812, 824. If it be conceded that proof of the necessary facts in individual cases is difficult, nevertheless, we submit that it is perfectly possible to keep such records and accounts in the rice milling business as will afford a sufficient basis for a determination whether the burden of the tax was borne by the processor. "The law, which is said not to require impossibilities, must be satisfied, in many of its applications, with fair and reasonable approximations." *Utah Power & L. Co.* v. *Pfost,* 286 U. S. 165, 191. The remedy, therefore, is adequate to secure the amount to which the processor is justly entitled. The elements of proof necessary

to establish a processor's case in a suit for refund under Section 21(d) are certainly no more onerous and burdensome than the elements of proof imposed upon the citizen in *Perry* v. *United States,* 294 U. S. 330. In that case it was held that the plaintiff must prove actual damage by the devaluation of the dollar. Nor are the elements of proof under Section 21 (d) more difficult and intricate than the burden of proof upheld in *Reinecke* v. *Spalding,* 280 U. S. 227, in connection with fixing the rate of depletion. See 30 F. (2d) 369, 370.

In any event, we submit that this is not the proper proceeding in which to determine whether or not Section 21 (d) denies an adequate remedy. The statute gives a remedy for the recovery of taxes to which the processor is justly and equitably entitled. Whether its requirements are susceptible of proof is best determined in the suit for refund where all of the factors bearing upon the question may be developed. It is not lightly to be assumed that the Commissioner or the courts will so construe the remedy as to deny the taxpayer the relief provided. Rather, the assumption may be made that the section will be administered fairly to allow a refund where it appears to be warranted. *But in any event, until a real attempt is made to show the facts contemplated by the statute, a decision by this Court based solely upon abstract considerations that the test can never be met and that no*

remedy is afforded, it is submitted, would be premature and unwarranted.

The situation is not similar to that in *Ohio Oil Co.* v. *Conway,* 279 U. S. 813, cited by the petitioners (Br. 28). There it appeared that if the State tax should be unconstitutional, the injury to the taxpayer would be certain and irreparable, since the local law afforded no remedy whereby restitution might be made. Here the remedy is given by the statute and its efficacy can be tested by suit at law.

3. Section 21 (d) does not deny the processor due process of law by denying him a trial de novo

Apart from the question whether the statute places upon them an impossible burden of proof, which has been discussed, the petitioners argue that the remedy is inadequate and they are deprived of due process because there is not a trial *de novo* in the District Court, but a decision based on the record made before the Commissioner of Internal Revenue, and that they are deprived of the right to trial by jury.

The Agricultural Adjustment Act, as amended, does not in terms provide that there shall be no trial by jury to recover processing taxes.

Section 19 (b) of the Act, as amended, makes available to the processor all the remedies available to those paying excise taxes under Section 600 of the Revenue Act of 1926, *infra,* and Section 626 of the Revenue Act of 1932, *infra,* which include

Sections 3220 and 3226 of the Revised Statutes, *infra,* and related provisions. It should be noted also that under Section 21 (g) of the Agricultural Adjustment Act, as amended, Section 3226 of the Revised Statutes is specifically made applicable, and by Section 21 (d) (3) the District Courts are expressly given jurisdiction.

There is, of course, no right to trial by jury in suits against the United States, *McElrath* v. *United States,* 102 U. S. 426, 440; *Luckenback S. S. Co.* v. *United States,* 272 U. S. 533. The right of trial by jury in proceedings against the Collector arises by implication from Section 566 of the Revised Statutes (U. S. C., Title 26, Sec. 770), and Section 3226 of the Revised Statutes. See *Wickwire* v. *Reinecke,* 275 U. S. 101.

Hence, the Agricultural Adjustment Act does not prohibit trial by jury, but it does to some extent remove all necessity for a jury trial by limiting the issues before the District Courts.

Under Section 21 (d) it is provided that no refund or credit shall be allowed unless after a claim is duly filed, "it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record" after hearing, that the processor has not passed the tax on to the consumer or back to the producer. It further provides that in any judicial proceeding relating to such claim, a transcript of

the hearing before the Commissioner shall be duly certified and filed as the record in the case, and shall be so considered by the court. We believe that this provision clearly makes the Commissioner's determination of the fact whether the tax has been passed on to the consumer or back to the producer, conclusive if supported by substantial evidence and not plainly arbitrary.[20]

Whether the statute be construed as doing away with a jury trial on all issues of fact, or merely removing from the jury the one issue of fact as to whether the burden of the tax has been passed on to the consumer, the same procedure has been tried and not found wanting in due process in the collection of customs duties.

Under present procedure the importer who is dissatisfied with the valuation placed on his imports by the collector of customs may appeal to the Customs Court on the record made before the collector. The Customs Court is merely an administrative body performing the same functions as the Board of General Appraisers, whose duties it took over. Act of May 28, 1926, c. 411, 44 Stat. 669 (U. S. C., Title 28, Secs. 301–311). *Ex parte Bakelite Corp'n*, 279 U. S. 438. If still dissatisfied, the importer may then appeal to the Court of Customs Appeals, but

[20] There is some reason to assume from the Committee Reports that Congress intended there should be no trial *de novo* on any issues of fact. See H. Rep. No. 1757, 74th Cong., 1st Sess., pp. 31–35.

his review there is not a trial *de novo* (Judicial Code, Secs. 195, 196, U. S. C., Title 28, Secs. 308–309).

This remedy is exclusive (*United States* v. *Stone & Downer Co.*, 274 U. S. 225; *Riccomini* v. *United States*, 69 F. (2d) 479 (C. C. A. 9th)), but it has been held to afford an adequate remedy and constitute due process. *Ex parte Bakelite Corp'n*, 279 U. S. 438. See also *Vitelli & Son* v. *United States*, 250 U. S. 355; *United States* v. *Aetna Explosives Co.*, 256 U. S. 402; *United States* v. *Rice & Co.*, 257 U. S. 536; *United States* v. *Stone & Downer Co.*, *supra.*

In *Ex parte Bakelite Corp'n, supra,* the Court said (pp. 451–452, 458):

> Legislative courts also may be created as special tribunals to examine and determine various matters, arising between the government and others, which from their nature do not require judicial determination and yet are susceptible of it. The mode of determining matters of this class is completely within congressional control. Congress may reserve to itself the power to decide, may delegate that power to executive officers, or may commit it to judicial tribunals.
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> *The Court of Customs Appeals was created by Congress in virtue of its power to lay and collect duties on imports and to adopt any appropriate means of carrying*

> *that power into execution. The full province of the court under the act creating it is that of determining matters arising between the Government and others in the executive administration and application of the customs laws. These matters are brought before it by appeals from decisions of the Customs Court, formerly called the Board of General Appraisers. The appeals include nothing which inherently or necessarily requires judicial determination, but only matters the determination of which may be, and at times has been, committed exclusively to executive officers.* True, the provisions of the customs laws requiring duties to be paid and turned into the Treasury promptly, without awaiting disposal of protests against rulings of appraisers and collectors, operate in many instances to convert the protests into applications to refund part or all of the money paid, but this does not make the matters involved in the protests any the less susceptible of determination by executive officers. In fact their final determination has been at times confided to the Secretary of the Treasury, with no recourse to judicial proceedings. (Italics supplied.)

The procedure under the Customs Administration Act of June 10, 1890, c. 407, 26 Stat. 131, 138, was similar except that then the appeal was from the decision of the collector, to the Board of General Appraisers and thence to the Circuit Courts. But there was no jury trial in the Circuit Courts,

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because the Act of 1890 repealed the right to sue the collector and obtain a jury trial which had existed under Section 3011 of the Revised Statutes.[21] Since the enactment of that Act, neither a statutory nor a common law action against the Collector can be brought for the recovery of customs duties. *Schoenfeld* v. *Hendricks,* 152 U. S. 691; *United States* v. *Passavant,* 169 U. S. 19; *Arnson* v. *Murphy,* 109 U. S. 238. Moreover, that Act made the determination of the Board of General Appraisers on questions of value ~~and classification~~ conclusive, if supported by evidence, so that the Circuit Courts had nothing substantial to review except question of law. *United States* v. *Passavant,* 169 U. S. 19; *In re Kursheedt Manuf'g Co.,* 49 Fed. 633 (C. C. S. D. N. Y.), affirmed, 54 Fed. 159 (C. C. A. 2d); *In re White,* 53 Fed. 787 (S. D. N. Y.); *Vandiver* v. *United States,* 156 Fed. 961 (C. C. A. 3d). See also *Norwegian Nitrogen Co.* v. *United States,* 288 U. S. 294, 316. While under that Act the Circuit Courts had authority to direct taking of further evidence (*In re Fasset,* 142 U. S. 479, 486; *In re F. W. Myers,* 123 Fed. 952 (N. D. N. Y.)), they generally declined to permit the introduction of evidence on points on which no evidence was introduced before

[21] There may be an action against the Collector of Customs for money had and received, where, regardless of protests, he has taxed something which was not an import at all. *DeLima* v. *Bidwell,* 182 U. S. 1.

the Board. *United States* v. *China & Japan Trading Co.*, 71 Fed. 864 (C. C. A. 2d); *William F. Allen & Co.* v. *United States*, 127 Fed. 777 (C. C. A. 2d); *J. S. Plummer & Co.* v. *United States*, 166 Fed. 730 (C. C. A. 2d), affirming 160 Fed. 284 (S. D. N. Y.). The remedy provided by that statute was exclusive. *United States* v. *Lies*, 170 U. S. 628.

Even prior to 1890, when there was a right of action against the Collector in customs cases, the valuation of the merchandise was removed from the jury by the appraiser's finding being made conclusive. *Origet* v. *Hedden*, 155 U. S. 228; *Auffmordt* v. *Hedden*, 137 U. S. 310; *Earnshaw* v. *United States*, 146 U. S. 60; *Erhardt* v. *Schroeder*, 155 U. S. 124; *Passavant* v. *United States*, 148 U. S. 214. Yet that procedure was held to afford an adequate remedy and to constitute due process. In *Auffmordt* v. *Hedden, supra*, the Court said (p. 324):

> "* * * In these respects the United States have, as was said by this court in *Nichols* v. *United States*, 7 Wall. 122, enacted a system of corrective justice, as well as a system of taxation, in both its customs- and internal-revenue branches. That system is intended to be complete. In the customs department it permits appeals from appraisers to other appraisers, and in proper cases to the Secretary of the Treasury; and, if dissatisfied with this highest decision of the executive department of the government, the law permits the party, on paying the money re-

quired, with a protest embodying the grounds of his objection to the tax, to sue the government through its collector, and test in the courts the validity of the tax." It was said also in that case (p. 89) that the government "*has the right to prescribe the conditions on which it will subject itself to the judgment of the courts in the collection of its revenues.*" One of those conditions is and always has been, that the determination of appraisers as to the dutiable value of goods shall be conclusive and not reexaminable in a suit at law, provided that appraisers are selected in conformity with the statute, and, in appraising, act within the scope of the powers conferred upon them. See, also, *State Railroad Tax Cases,* 92 U. S. 575, 613; *Snyder* v. *Marks,* 109 U. S. 189, 193, 194; *Hilton* v. *Merritt,* 110 U. S. 97; *Arnson* v. *Murphy,* 115 U. S. 579, 585, 586; *Oelbermann* v. *Merritt,* 123 U. S. 356, 361. (Italics supplied.)

See also, *Cheatham* v. *United States,* 92 U. S. 85, 88–89.

Nor is there any reason to conclude that a processor who is taxed is given different or greater constitutional guarantees than an importer who pays duties. The brief of *amici curiae* suggests that in imposing duties, Congress is relying upon its power to control foreign commerce as well as upon its taxing power and, hence, that decisions relating to the collection of duties are not controlling, citing *Board of Trustees* v. *United States,* 289 U. S. 48. We submit that that case does not stand for the

principle that different methods of procedure must be followed as to the *recovery* of duties and excise taxes. While the power of Congress to control foreign commerce may be the power relied upon in admitting or excluding articles from this country (*Buttfield* v. *Stranahan*, 192 U. S. 470), that power does not determine what constitutes due process in the recovery of duties or taxes paid. It is obvious that in matters of procedure what constitutes due process in permitting actions to recover duties should constitute due process in actions to recover internal revenue and other taxes, all of which are limited by Article I, Section 8, Clause 1, of the Constitution, and we know of no case holding otherwise. Indeed this Court has often considered tariff cases in the light of the Fifth Amendment. See *Cary* v. *Curtis*, 3 How. 235, and *Auffmordt* v. *Hedden, supra*. The same plenary power exists as to taxation that exists as to foreign commerce.

It follows, therefore, that all right of action by the processor against the collector might be withdrawn as the right of the importer to sue the collector has been, leaving the processor only his remedy against the United States and hence, depriving him of a jury trial.

A new remedy may be adopted for the collection of taxes. *League* v. *Texas*, 184 U. S. 156. Inasmuch as Congress can prescribe the conditions under which it will allow suits to recover the processing taxes (*Cheatham* v. *United States, supra*), it obviously can take away the right of trial by

jury without violating the due-process clause. The matter is merely procedural and procedural matters may be altered. *Funkhouser* v. *Preston Co.*, 290 U. S. 163; *Red River Valley Bank* v. *Craig*, 181 U. S. 548, 553; *Tennessee* v. *Sneed*, 96 U. S. 69, 73–74, and cases cited. *Backus* v. *Fort Street Union Depot Co.*, 169 U. S. 557, 570; *In re Villano*, 102 N. J. Eq. 187, 188; *League* v. *Texas*, *supra*; *Ettor* v. *Tacoma*, 228 U. S. 148, 155.

In *Wickwire* v. *Reinecke*, *supra*, this Court expressly stated that the right to a trial by jury in suits against the Collector of Internal Revenue might be withdrawn.

In that case this Court said (pp. 105–106):

> It was suggested, in the brief for the United States in resisting the application for certiorari, that the assignment of error made on behalf of the petitioner was inadequate in that it was not based on a reference to the Seventh Amendment to the Constitution requiring a jury trial in a civil case involving more than twenty dollars. This objection has not been renewed in the brief on the merits, doubtless because the right of the petitioner to a jury in such a case is not to be found in the Seventh Amendment to the Constitution but merely arises by implication from the provisions of § 3226, Revised Statutes, which has reference to a suit at law. It is within the undoubted power of Congress to provide any reasonable system for the collection of taxes and the recovery of them when illegal without a jury trial—

> if only the injunction against the taking of property without due process of law in the method of collection and protection of the taxpayer is satisfied. *Murray's Lessee* v. *Hoboken Land and Improvement Co.*, 18 How. 272, 281, 282, 284; *Nichols* v. *United States*, 7 Wall. 122, 127; *Cheatham* v. *United States*, 92 U. S. 85, 88, 89.

We think that in so holding this Court recognized that a suit against the collector is no longer a suit at common law but a statutory proceeding, and hence that no jury trial is required by the Seventh Amendment.

Prior to 1839 collectors were not required to pay into the Treasury taxes collected but might retain them pending the outcome of controversies concerning liability. Under that state of the law it was held in *Elliott* v. *Swartwout*, 10 Pet. 137, that a common-law action in assumpsit would lie against the collector to recover an excess of duties paid to the collector with notice of the intention of the payor to sue to recover it. The Court said (p. 158):

> From this view of the cases, it may be assumed as the settled doctrine of the law, that where money is illegally demanded and received by an agent, he cannot exonerate himself from personal responsibility, by paying it over to his principal, if he has had notice not to pay it over. The answer, therefore, to the third point must be, that the collector is personally liable to an action to recover back an excess of duties paid to him as collector,

under the circumstances stated in the point; although he may have paid over the money into the treasury.

On March 3, 1839, a statute was passed, c. 82, 5 Stat. 339, 348 (See also Sec. 3210, Revised Statutes, U. S. C., Title 26, Sec. 1761), which made it obligatory for the collector to pay all moneys received into the Treasury. After the enactment of this statute it was held in *Cary* v. *Curtis*, 3 How. 235, that the collector was no longer such an agent as would make him liable within the ordinary rules of agency, that an action of assumpsit for money had and received would no longer lie against the collector, and that the statute so construed was not unconstitutional. Cf. *Smietanka* v. *Indiana Steel Co.*, 257 U. S. 1.

Shortly after the decision in *Cary* v. *Curtis, supra,* was handed down Congress passed the Act of February 26, 1845, c. 22, 5 Stat. 727, which provided that nothing in Section 2 of the Act of 1839 should be construed to deny or impair the right of any persons "who have paid or shall hereafter pay" duties under protest "to maintain any action at law against such collector * * * and to have a right to a trial by jury" to determine the legality and validity of such payment, but such action could be maintained and recovery could be had only if protest was made in writing at or before the payment of the duties, setting forth distinctly and specifically the grounds of objection to the payment thereof.

Later statutes likewise provided that where a recovery should be had and the court should certify that there was probable cause for the act done by the collector or that he acted under the direction of the Secretary of the Treasury or other proper officer, no execution should issue against him and the amount so recovered, should, upon final judgment, be provided for and paid out of the Treasury. C. 76, 12 Stat. 737, 741, Section 989, R. S.; *City of Philadelphia* v. *Collector,* 5 Wall. 720, 731; *Curtis's Administratrix* v. *Fiedler,* 2 Black 461; *Collector* v. *Hubbard,* 12 Wall. 1; *Arnson* v. *Murphy,* 109 U. S. 238.

In *Arnson* v. *Murphy, supra; Auffmordt* v. *Hedden, supra,* and *Schoenfeld* v. *Hendricks,* 152 U. S. 691, it was held directly that the suit against the collector thereafter was purely statutory and that it was substituted for every common-law right.

In *Curtis's Administratrix* v. *Fiedler, supra,* the duties had been paid under protest and remitted to the Treasury in 1842 and suit was brought after the passage of the Act of February 26, 1845. The Court cited *Cary* v. *Curtis, supra,* with approval, but held that in view of the Act of February 26, 1845, suit could have been maintained against the collector if the protest filed had been sufficient, but that it was not. See also *Barney, Collector* v. *Watson,* 92 U. S. 449.

Again in *Nichols* v. *United States,* 7 Wall. 122, the Court, after pointing out that the Act of 1845 altered the rule previously in force, said (p. 127):

> The allowing a suit at all, was an act of beneficence on the part of the government. As it had confided to the Secretary of the Treasury the power of deciding in the first instance on the amount of duties demandable on any specific importation, so it could have made him the final arbiter in all disputes concerning the same.

We think that these decisions establish that the remedy against the collector is now a statutory remedy. It is a wholly anomalous proceeding in any event since the collector is required to pay over his collections and since protest is no longer a condition precedent to recovery. See Section 3226 of the Revised Statutes; *Moore Ice Cream Co.* v. *Rose,* 289 U. S. 373. We do not think that decisions holding that the remedy against the collector is personal mean necessarily that it is a common-law remedy but on that subject. Compare *Smietanka* v. *Indiana Steel Co., supra,* and *Graham & Foster* v. *Goodcell,* 282 U. S. 409, with *Moore Ice Cream Co.* v. *Rose, supra.*

Inasmuch as it is a statutory remedy, the right to a trial by jury is not required and may be denied by Congress, as this Court held in *Wickwire* v. *Reinecke, supra.*

Thus the right of action against a collector of customs may be taken away and the judicial proceedings in customs cases may be limited to questions of law arising on a record as previously made before an administrative body; it follows that in a

proceeding against the Collector of Internal Revenue given by statute, the jurisdiction of the District Court may be limited to a review of errors of law arising on the record made before the Commissioner or its review on the one issue of the passing on of the tax may be so limited, if the Court so construes the statute.

Congress, of course, has power to take away jurisdiction of the District Courts. *Cary v. Curtis*, 3 How. 235; *Kline v. Burke Constr. Co.*, 260 U. S. 226, 234. Moreover, as has already been pointed out, since the matter is merely procedural, Congress could make changes in procedure governing suits to recover taxes without violating the due process clause.

Under the statute here involved, the petitioners are entitled to notice and hearing before the Commissioner of Internal Revenue and may offer all of the evidence that they might offer to a court to enable it to determine whether they are entitled to recovery.

But the statute does not stop short with the administrative review. It provides that the processor may bring suit to recover in the District Court and that the entire record of the proceedings before the Commissioner, not just the Commissioner's findings, shall be the basis of proceedings before the Court. This makes it possible for the Court to determine all questions of law, including the question whether the Commissioner's determination is supported by evidence.

The procedure in this case likewise resembles that in the case of appeals from the Board of Tax Appeals to the Circuit Court of Appeals in income and estate tax cases, except that the Board of Tax Appeals record may or may not contain the evidence in addition to the Board's findings. The Circuit Courts of Appeals have no jurisdiction to redetermine issues of facts but are limited to a determination of questions of law, among which are included the question whether the findings of the Board are supported by substantial evidence. This procedure has been sustained as constituting due process of law. *Old Colony Trust Co.* v. *Commissioner,* 279 U. S. 716; *Phillips* v. *Commissioner, supra.*

The petitioners seek to distinguish those cases on the ground that there the taxpayer had the option of paying the tax and then bringing suit to recover. But we think the language of the court in *Phillips* v. *Commissioner, supra,* indicates that the first procedure alone would have been sufficient. The Court said, p. 600:

> Nor is the second objection of weight. It has long been settled that determinations of fact for ordinary administrative purposes are not subject to review. *Johnson* v. *Drew,* 171 U. S. 93, 99; *Public Clearing House* v. *Coyne,* 194 U. S. 497, 508; *United States* v. *Ju Toy,* 198 U. S. 253, 263; *Red "C" Oil Co.* v. *North Carolina,* 222 U. S. 380, 394; *Mutual Film Co.* v. *Industrial Commission,* 236 U. S.

230, 246. Compare *Williamsport Wire Rope Co.* v. *United States,* 277 U. S. 551, 560. Save as there may be an exception for issues presenting claims of constitutional right, such administrative findings on issues of fact are accepted by the court as conclusive if the evidence was legally sufficient to sustain them and there was no irregularity in the proceedings. *Reetz* v. *Michigan,* 188 U. S. 505, 507; *Lieberman* v. *Van De Carr,* 199 U. S. 552, 562; *Douglas* v. *Noble,* 261 U. S. 165, 167; *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, 443. The adequacy of the scope of review offered by the Revenue Act of 1926 in the case of a deficiency determined directly against the taxpayer was assumed in *Old Colony Trust Co.* v. *Commissioner,* 279 U. S. 716; and this procedure is now thoroughly established. Questions of fact involved in proceedings against transferees are no different or more complex than those often encountered in determining the direct liability of a taxpayer. The alternative judicial review provided is adequate in both cases.

We understand this decision to mean that the judicial review is adequate in cases appealed from the Board, because the taxpayer retains the right to raise all constitutional questions and other questions of law, but that even if it were not, the alternative remedy of proceeding in the District Court was sufficient. We do not understand, as the peti-

tioners seem to contend, that it was only adequate because of the alternative remedy.[22]

Under Section 16 of the Radio Act of 1927, c. 169, 44 Stat. 1162, 1169, as amended by the Act of 1930, c. 788, 46 Stat. 844, it is provided that the Court of Appeals of the District of Columbia may review the orders denying or revoking licenses of the Radio Commission, its review being limited to questions of law only and the findings of the Commission, supported by evidence, being conclusive. Decisions of the Court of Appeals may be reviewed by this Court on writ of certiorari. In *Radio Comm'n* v. *Nelson Bros. Co.*, 289 U. S. 266, it was held that this procedure was adequate, notwithstanding there was no trial *de novo*, and that the decrees of the Court of Appeals were reviewable by this Court.

Tagg Bros. v. *United States*, 280 U. S. 420, 443, arose under the Packers and Stockyards Act, 1921, which gives the Secretary of Agriculture authority to prescribe a maximum charge for services of market agencies in stockyards. (C. 64, 42 Stat. 163–168; U. S. C., Title 7, Secs. 181–217.) The statute provides that an injunction proceeding may be instituted to prevent the enforcement of his order, subject to the same limitations as in actions to enjoin enforcement of orders of the Interstate Commerce Commission. See Act of October 22, 1913, c. 32, 38 Stat. 208, 220; U. S. C., Title 28,

[22] That was the position urged upon this Court by the Government in its brief, page 29.

Sec. 47. The validity of the order is determined upon the record of proceedings before the Secretary, and an appeal may be taken directly to this Court. In sustaining the order of the Secretary in the *Tagg* case, as supported by substantial evidence and not arbitrary, the Court said (pp. 443–444):

> A proceeding under § 316 of the Packers and Stockyards Act is a judicial review, not a trial *de novo*. The validity of an order of the Secretary, like that of an order of the Interstate Commerce Commission, must be determined upon the record of the proceedings before him—save as there may be an exception of issues presenting claims of constitutional right, a matter which need not be considered or decided now. *Louisville & Nashville R. R. Co.* v. *United States,* 245 U. S. 463, 466; compare *Liscio* v. *Campbell,* 34 F. (2d) 646, 647; and see *Prendergast* v. *New York Telephone Co.,* 262 U. S. 43, 50, and *Ohio Valley Water Co.* v. *Ben Avon Borough,* 253 U. S. 287, 289. On all other issues his findings must be accepted by the court as conclusive, if the evidence before him was legally sufficient to sustain them and there was no irregularity in the proceeding.

See also H. Rep. No. 1665, 71st Cong., 1st Sess., p. 2; *Farmers' Livestock Commission Co.* v. *United States,* 54 F. (2d) 375 (E. D. Ill.).

The determinations of the Interstate Commerce Commission as to whether a rate is reasonable or

unreasonable is conclusive, if supported by substantial evidence in the absence of any irregularity in the proceedings or in applying rules of law. *West Chem. Co.* v. *United States,* 271 U. S. 268; *Virginian Ry.* v. *United States,* 272 U. S. 658; *Atchison Etc. Ry. Co.* v. *United States,* 284 U. S. 248; *Int. Com. Comm.* v. *Louis. & Nash. R. R.,* 227 U. S. 88; *Texas & N. O. R. Co.* v. *United States,* 295 U. S. 395.

Cease and desist orders of the Federal Trade Commission are not reviewable on questions of fact except to determine whether the Commission has been arbitrary (*Fed. Trade Comm.* v. *Curtis Co.,* 260 U. S. 568; *Fed. Trade Comm.* v. *Pac. Paper Assn.,* 273 U. S. 52, 63).

Certain questions of fact are finally determined by officers of the General Land Office without due process of law being violated (*Burfenning* v. *Chicago, St. Paul &c R'y,* 163 U. S. 321; *Johnson* v. *Drew,* 171 U. S. 93), and by the Postmaster General (*Public Clearing House* v. *Coyne,* 194 U. S. 497; *Leach* v. *Carlile,* 258 U. S. 138; *Milwaukee Publishing Co.* v. *Burleson,* 255 U. S. 407. See also *School of Magnetic Healing* v. *McAnnulty,* 187 U. S. 94), and by the Director of the Veterans' Administration. *Silberschein* v. *United States,* 266 U. S. 221.

State Workmen's Compensation acts have been sustained which direct that the administrative body shall determine the amount of compensation and limit the question for review to questions of law.

Hawkins v. *Bleakly*, 243 U. S. 210; *New York Central R. R. Co.* v. *White*, 243 U. S. 188; *Dahlstrom Metallic Door Co.* v. *Industrial Board of New York*, 284 U. S. 594, affirming *per curiam*, *Matter of Helfrick* v. *Dahlstrom M. D. Co.*, 256 N. Y. 199. For other State administrative determinations, see *Plymouth Coal Co.* v. *Pennsylvania*, 232 U. S. 531; *Rail Coal Co.* v. *Ohio Industrial Comm.*, 236 U. S. 338.

It makes no difference whether these matters of fact are left to the determination of a board or an administrative officer, so long as an adequate hearing is given. See *Tagg Bros.* v. *United States*, *supra*.

The cases of *Ohio Valley Co.* v. *Ben Avon Borough*, 253 U. S. 287, and *Crowell* v. *Benson*, 285 U. S. 22, do not support the principle that determinations of questions of fact by administrative boards or officers may not be made conclusive, if supported by evidence.

In the latter case, with three judges dissenting, the Court held that due process of law was not violated by the provisions of the Longshoremen's and Harbor Workers' Compensation Act, which made the findings of the Deputy Commissioner of the United States Employees' Compensation Commission conclusive on the question as to the circumstances, nature, extent, and consequences of the employees' injuries, but held that its determination that the injury occurred upon the navigable waters of the United States and that an employer-

employee relationship existed, could not be made conclusive, because it was jurisdictional. The Court there pointed out that the existence of the master and servant relationship and the occurrence of the injury on the navigable waters of the United States were indispensable to the power of Congress to enact the legislation as well as to the application of the statute. Because of these peculiar facts, the Court held that the Deputy Commissioner's determination on those issues (but not on other issues of fact) was not conclusive.

The *Ohio Valley Company* case, *supra,* involved the scope of review upon the administrative record in a rate case coming from a state court. This Court did not object to the fact that there was no trial *de novo* of the case in the state court but did hold that the reviewing court must have power to weigh the evidence upon which the State Public Service Commission entered the order fixing the maximum future rates chargeable by the water company in order to determine whether the rate was confiscatory. The decisions in *United Railways* v. *West,* 280 U. S. 234, and *State Comm'n* v. *Wichita Gas. Co.,* 290 U. S. 561, are to the same effect.

We submit that those cases are authority only for the proposition that a statute cannot deny the court's power to reach an independent judgment on the question of value in rate cases where confiscation is claimed. See *Lehigh Valley R. R.* v. *Commissioners,* 278 U. S. 24. It has no reference

to administrative determinations in Federal tax controversies. See *Phillips* v. *Commissioner*, 283 U. S. 589.

It is not inconsistent with the principle of due process to make determinations of fact by administrative boards or officers conclusive if supported by evidence. The term "due process" was borrowed from the English "law of the land" (*Davidson* v. *New Orleans*, 96 U. S. 97), and does not necessarily mean judicial process (*Public Clearing House* v. *Coyne*, 194 U. S. 497; *Reetz* v. *Michigan*, 188 U. S. 505; *Davidson* v. *New Orleans, supra; Murray's Lessee* v. *Hoboken Land and Improvement Co.*, 18 How. 272; *Ex parte Wall*, 107 U. S. 265, 288; *McMillen* v. *Anderson*, 95 U. S. 37), nor does it mean any particular kind of proceeding or procedure. *Insurance Co.* v. *Glidden Co.*, 284 U. S. 151.

The due process clause of the Fifth and Fourteenth Amendments merely requires that the Federal and State Governments shall not deprive one of his property or liberty without such notice and hearing as is commensurate with the necessities of the case, and the character of the rights affected. *Hagar* v. *Reclamation District. No. 108*, 111 U. S. 701; *Buttfield* v. *Stranahan*, 192 U. S. 470; *Hurwitz* v. *North*, 271 U. S. 40; *United States* v. *Ju Toy*, 198 U. S. 253; *Lent* v. *Tillson*, 140 U. S. 316; *Fong Yue Ting* v. *United States*, 149 U. S. 698; *Chicago, Burlington &c. R'd* v. *Chicago*, 166 U. S. 226. See also *Title Guaranty Co.* v. *Allen*, 240 U.

S. 136; *Pacific Live Stock Co.* v. *Oregon Water B'd,* 241 U. S. 440.

It is particularly true that in the field of Federal taxation, due process may not mean judicial process. In *Murray's Lessee* v. *Hoboken Land and Improvement Co., supra,* it was held to be due process of law for Congress to provide summary means to compel revenue officers, or in case of default, their sureties, to pay over such balances of the public moneys as might be in their hands. The Court there said (p. 280):

> For, though "due process of law" generally implies and includes *actor, reus, judex,* regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceedings, * * * yet, this is not universally true.

In that connection, it should be noted that the Fifth Amendment is not a general limitation on the taxing powers of the Federal Government. *Brushaber* v. *Union Pac. R. R.,* 240 U. S. 1. It has sometimes been invoked to prevent the Federal Government from reaching certain subjects in estate and income taxation; as, for example, transfers fully consummated before death. *Heiner* v. *Donnan,* 285 U. S. 312; *Nichols* v. *Coolidge,* 274 U. S. 531. Similarly, it is held that a State cannot tax one person on another's income. *Hoeper* v. *Tax Commission,* 284 U. S. 206. These decisions do not deal with matters of procedure but subjects of taxation, and they rest upon the ground that a tax may not be

so arbitrary and capricious as to amount to confiscation under the Fifth and Fourteenth Amendments. They are the type of cases to which the Court referred to in the footnote in *Louisville Bank* v. *Radford,* 295 U. S. 555, 589, which the brief of *amici curiae* has mentioned (p. 11).

There are intimations in the cases of *Londoner* v. *Denver,* 210 U. S. 373, and *Hagar* v. *Reclamation District No. 108, supra,* that there are forms of taxes, for example, poll taxes, which may be imposed without even an administrative hearing where the determination of the tax is not left to administrative officers. But for the purposes of this case, we may accept the general rule that there must be either an administrative [23] or a judicial hearing at some stage of the proceedings. *Pittsburgh &c. R'y Co.* v. *Board of Pub. Works,* 172 U. S. 32; *Davidson* v. *New Orleans, supra; State Railroad Tax Cases,* 92 U. S. 575; *Kelley* v. *Pittsburgh,* 104 U. S. 78.

In reference to property taxes, for example, an administrative hearing on the valuation before the collection of the tax will constitute due process. *Pittsburgh, &c., Railway Co.* v. *Backus,* 154 U. S. 421; *McMillen* v. *Anderson, supra; Michigan Central Railroad* v. *Powers,* 201 U. S. 245, 301, 302; *Glidden* v. *Harrington,* 189 U. S. 255; *Hagar* v.

[23] If only an administrative hearing is granted it must give the individual due notice and a fair chance to present his case. *Londoner* v. *Denver, supra.* See also *Japanese Immigrant Case,* 189 U. S. 86; *United States* v. *Ju Toy, supra; Buttfield* v. *Stranahan, supra.*

Reclamation District No. 108, supra; Pittsburgh, &c., R'y Co. v. *Board of Pub. Works, supra.* And even where some kind of a judicial review may be had, in such cases, the valuation of the assessors or Board of Equalization may be conclusive unless it violates some law. See *Kentucky Railroad Tax Cases,* 115 U. S. 321. See also *Ex parte Bakelite Corp'n, supra.*

We think it is clearly settled, that when a judicial hearing is granted after an administrative hearing, the judicial hearing may be limited to questions of law without violating the due process clause.

It is our position that the procedure before the District Court grants an adequate judicial hearing, notwithstanding the limitation of issues before the court and the denial of a trial *de novo* and that it likewise constitutes due process of law.

4. *Even if Section 21 (d) is invalid on the ground that it denies due process, nevertheless, petitioners have an adequate remedy at law*

We have shown that Section 21 (d) does not deprive petitioners of due process, either because of impossibility of proof or because of the denial of a *de novo* trial in the District Court. If the petitioners should be relegated to suits for refund, which we contend are the only proper proceedings under the circumstances, they will be deprived of no constitutional rights even though their complaints against Section 21 (d) are justified. Should

it be considered that due process is denied on either of these grounds the section, we assume, would be invalid and have no effect. If the section is invalid for either reason petitioners would then be relegated to their rights under the general statutes providing for tax refunds, reenacted in Section 19 (b) of the Act, free from the limitation imposed by Section 21 (d). This is the only logical construction in the light of Section 21 (g) of the Act, which extends Section 3226 of the Revised Statutes to apply to any suit for the recovery of processing taxes. Furthermore, the statute contains a separability clause (Section 14) which permits such a result to be accomplished.

Throughout their brief the petitioners have contended that Section 21 (a) or the proceedings for summary collection are unconstitutional *because of* the arbitrary limitations of Section 21 (d). They have studiously avoided suggesting that Section 21 (d) is unconstitutional. But clearly, if they are deprived of due process it must follow from their very complaint that Section 21 (d) accomplishes that result, and not Section 21 (a), nor proceedings for summary collection.

The situation, we think, reduces itself to this: If, as we contend, Section 21 (d) does not deny an adequate remedy at law, injunction will not lie; if, on the contrary, its effect is to deprive the taxpayer of any remedy, it could be held invalid in the suit for refund and the petitioners would then be rele-

gated to the unquestionably adequate remedy provided by Section 21 (g) and Section 3226 of the Revised Statutes and related provisions. In either event the petitioners have no basis upon which to predicate the contention that Section 21 (a) and Section 3224 of the Revised Statutes are inapplicable.

II

The Agricultural Adjustment Act, as Amended, Is Constitutional

We have shown that petitioners should not be permitted to enjoin the collection of the processing taxes here involved, whether or not the Act levying the tax be constitutional. *Bailey* v. *George,* 259 U. S. 16; *Dodge* v. *Osborn,* 240 U. S. 118. Therefore a consideration of the constitutionality of those provisions of the Act imposing the tax would seem to be unnecessary. However, if this Court shall consider the constitutional provisions (Cf. *Dodge* v. *Brady,* 240 U. S. 122; *Florida* v. *Mellon,* 273 U. S. 12), we submit that such provisions are constitutional.

The grounds upon which the Agricultural Adjustment Act, as amended, is asserted to be unconstitutional are that (1) though in form a revenue measure, it is in fact an attempt to regulate prices; (2) it violates the Tenth Amendment; (3) the taxes are not levied for the general welfare or for a public purpose; and (4) the Act, as amended, contains an unconstitutional delegation of legisla-

tive power to the Secretary of Agriculture. The objections thus raised are substantially the same as the constitutional issues raised in *United States* v. *William M. Butler et al.*, No. 401, Present Term.[24]

In the Government's brief in that case it is pointed out that the processing tax on cotton under the original Agricultural Adjustment Act is a valid excise (pp. 29–32); that it meets the constitutional requirements of uniformity (pp. 44–47); and that such taxes do not contravene the Fifth Amendment (pp. 116–122). It is also pointed out that the taxing provisions relate solely to the raising of revenue and that argument against the Act is based, not primarily on the method of taxation but on the use to be made of the proceeds raised thereby (pp. 24–29). On this ground the brief distinguishes the *Child Labor Tax Case*, 259 U. S. 20, and *Hill* v. *Wallace*, 259 U. S. 44 (p. 29). However, these cases have been construed by counsel on behalf of the taxpayer in the *Butler* case as holding that a tax is bad if some purpose other than the raising of revenue appears on the face of the act, and attempt has thereby been made to apply these cases to the Agricultural Adjustment Act on

[24] It is to be noted that these cases do not involve the floor stocks taxes, the validity of which is present in the *Butler* case. See Section 10 of the Act of March 18, 1935, now appearing as Section 16 (f) of the Act. Aside from this, the constitutional questions are substantially the same in both cases.

the ground that a purpose of regulation of agriculture appears on the face of that Act. This argument misconceives the true basis of the *Child Labor Tax Case* and *Hill* v. *Wallace*. They did not hold, contrary to *McCray* v. *United States*, 195 U. S. 27; *United States* v. *Doremus*, 249 U. S. 86; and *Hampton & Co.* v. *United States*, 276 U. S. 394, that acts prescribing methods having a reasonable relation to the exercise of the power of taxation were invalid because of an expressed purpose. They held that the *methods* set forth in the Acts under consideration had no reasonable relation to the exercise of the power of taxation and, therefore, that the Acts were bad. The question is *what* is done by the Act, not *why* it is done. No methods are contained in the pertinent provisions of the Agricultural Adjustment Act which do not have a reasonable relation to the exercise of the power of taxation given by the Constitution. The Act is, therefore, a proper exercise of that power and is not to be invalidated because enacted with some other purpose in view. *McCray* v. *United States, supra; United States* v. *Doremus, supra; Hampton & Co.* v. *United States, supra.*

Moreover, the only purpose other than the raising of revenue which may be found in the Act is the purpose which, it was hoped, would be accomplished by the expenditures to be made under the appropriation contained in the Act rather than by the levy of the taxes, and if that purpose may be

inquired into, it will be found to be a proper purpose of Federal expenditure of tax money. It is urged in our brief in the *Butler* case, that taxpayers should not be allowed to question the appropriation as a defense to the payment of their taxes (pp. 122–135). If the taxpayers are to be allowed to raise that question, however, the brief points out that the appropriation and acts taken by the administrative officers thereunder are a proper exercise of the spending power implied from the power to tax (see pp. 136, 90–101), for the reasons that the power of Congress to tax for the general welfare is not restricted by the other enumerated powers (pp. 135–172), that the purpose of the expenditures made under the appropriation has a reasonable relation to the promotion of the general welfare (pp. 172–227), that this purpose of promotion of the general welfare is a public purpose (pp. 227–241), and that the Act does not violate the Tenth Amendment (pp. 262–279). Also, aside from the taxing power, the brief demonstrates that the Agricultural Adjustment Act may be sustained as a valid exercise of the fiscal powers of Congress (pp. 241–262).

With regard to the argument beginning on page 98 of the brief of Malcolm Donald, Esq., as *amicus curiae* in the *Butler* case that the Hamiltonian view of the general welfare clause, for which we contend, is contrary to the practice under the Articles of Confederation, we refer the Court to Section 916 of Story, Constitution of the United States, Vol. I,

5th Ed., where this argument is analyzed and refuted. With regard to the argument on pages 177, 178, 194, and 195 of Mr. Donald's brief, based on *Frost Trucking Co.* v. *R. R. Com.*, 271 U. S. 583; and *Union Pac. R. R.* v. *Pub. Service Comm.*, 248 U. S. 67,[25] to the effect that the expenditure of money under the Agricultural Adjustment Act could not be conditioned on the reduction of production by farmers, we refer the Court to *Helvering* v. *Ind. Life Ins. Co.*, 292 U. S. 371. The distinction to be arrived at from the comparison of these cases is that while the legislature may not impose a condition beyond its power on the exercise of a Constitutional right, the legislature may impose any condition that it sees fit when it is extending a benefit to which the recipient has no Constitutional right. The rental and benefit payments under the Agricultural Adjustment Act are of the latter type.

The arguments advanced in the Government's brief in the *Butler* case, on the constitutionality of the Act, are applicable here. The taxes here involved are rice processing taxes for the month of September, 1935, and ensuing months. Section 9 (b) (3) of the Act, being Section 3 of the Act of March 18, 1935, adopted by Section 12 of the Act of August 24, 1935, imposes a tax at the rate of one cent per pound of rough rice on the processing thereof. Section 9 (d) (7), as added by Section 6 of the Act of March 18, 1935, defines the

[25] *Hammer* v. *Dagenhart*, 247 U. S. 251, and *Coyle* v. *Smith*, 221 U. S. 559, are to the same effect.

term "processing", as used in the Act, in reference to rice, to mean the cleaning, shelling, milling, grinding, rolling, or other processing of rough rice. Section 12 of the Act, as amended by Section 3 of the Act of August 24, 1935, appropriates an amount equal to the proceeds derived from all such taxes for the purpose of making rental and benefit payments and for other purposes discussed in the Government's brief in the *Butler* case (pp. 132–134). It is clear from the arguments there made that the tax here is a valid excise.

In addition to the arguments there made, certain other arguments are here necessary by reason of the amendments to the Agricultural Adjustment Act of March 8, and August 24, 1935, which contain specific provisions relating to rice. These arguments relate chiefly to the question of whether legislative power has been conferred on the Secretary of Agriculture. It will be seen that the amendments and the specific provisions relating to rice remove from these cases any basis for virtually all of the contentions relating to delegation of power which were made by the taxpayers in the *Butler* case.[26]

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[26] Petitioners in their brief in these cases content themselves for the most part with attacking the provisions of the Act prior to its amendment, failing to observe that many of these provisions can have no possible bearing in these cases by reason of the amendments and the specific provisions relating to rice. The questions of delegation under the original Act are fully treated in the Government's brief in the *Butler* case, and since these questions are not germane

(A) THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED, AND THE SPECIFIC PROVISIONS THEREOF RELATING TO RICE DO NOT INVOLVE ANY UNLAWFUL DELEGATION OF LEGISLATIVE POWER TO THE SECRETARY OF AGRICULTURE

In the *Butler* case, *supra,* the contentions are made that under the original Agricultural Adjustment Act, legislative powers were delegated to the Secretary of Agriculture in the following particulars: (1) In connection with the initiation of the tax; (2) in the selection of the subject matter of the tax; (3) in connection with the fixing of the rate of the tax; (4) in connection with the termination of the tax; and (5) in respect of his power to spend the proceeds derived from the tax. We will show that the basis of these contentions has been removed by the amendments and the specific provisions relating to rice.

1. No legislative powers have been delegated to the Secretary of Agriculture with respect to the initiation of the tax

Section 9 (a) of the Act, as amended by Section 11 of the Act of August 24, 1935, provides generally that the processing taxes levied thereunder

here, the arguments there made are not repeated here. Petitioners have also attacked certain provisions of the Act that do not and could not possibly affect them—for example, Sections 8 (1), 11 and 15 (a). Under familiar rules such contentions may not be urged here. In the ensuing discussion it will be shown that none of the provisions, insofar as they affect these petitioners, contain any delegation of legislative authority.

shall become effective as to the processing of any given commodity when the Secretary of Agriculture determines that rental or benefit or other payments shall be made in reference thereto under the authority conferred by Section 8 of the Act. When the Secretary makes such a determination he is required to proclaim his findings and thereupon the tax becomes effective from the beginning of the next succeeding marketing year. In the *Butler* case it is urged that these provisions give the Secretary power to initiate the tax. Such an argument cannot apply in these cases.

Section 9 (a) of the Act, as amended by Section 1 of the Act of March 18, 1935, specifically provides that in the case of rice the Secretary of Agriculture shall, before April 1, 1935, proclaim that rental or benefit payments are to be made in respect thereto. The same provision further specifically provides that the processing tax in respect to rice shall be in effect on and after April 1, 1935. Section 3 of the Act of March 18, 1935, specifically provides that the processing tax in respect to rice shall be in effect for the period from April 1, 1935, to July 31, 1936. This provision now appears as Section 9 (b) (3) of the Act, in accordance with Section 12 of the Act of August 24, 1935. Thus, it is seen that in the case of rice, Congress itself has specifically provided when the tax should go into effect. Consequently, the contention of the taxpayers in the *Butler* case, that the power to initiate the tax was unconstitutionally delegated to the Secretary of

Agriculture, has no basis in the instant cases because of the specific provisions of the Act as amended.

2. No legislative powers have been delegated to the Secretary of Agriculture with respect to the selection of the subject matter of the tax

Section 11 of the Act specifies several basic agricultural commodities, and in the *Butler* case, the taxpayers contended that the power to select the subject matter of the tax was unlawfully delegated to the Secretary of Agriculture, because the tax would not become effective as to the processing of any specific agricultural commodity named in Section 11, unless and until the Secretary made his finding of fact and issued his proclamation under Section 9 (a) of the Act. No basis for such a contention exists in the instant cases.

As has been pointed out above, the Secretary is under an expressed mandatory duty, prior to April 1, 1935, to issue a proclamation that he will make rental and benefit payments in respect to rice. It has also been pointed out above that Congress has specifically made the processing tax in respect to rice effective on April 1, 1935. By Section 3 of the Act of March 18, 1935, Congress imposed the processing tax with respect to rice at the rate of one cent per pound of rough rice. Section 12 of the Act of August 24, 1935, adopted this provision. By Section 4 of the Act of March 18, 1935, Congress specifically set forth the manner for the determination

of the weight of rough rice. By Section 9 (d) (7) of the Act as added by Section 6 of the Act of March 18, 1935, the term "processing" is defined as used in reference to rice. It is apparent, therefore, that no question of delegation arises with respect to the subject matter of the tax.

3. No legislative powers have been delegated to the Secretary of Agriculture with respect to the determination of the rate of the tax

The only objections which the petitioners can raise respecting delegation of legislative power to the Secretary of Agriculture in reference to the rate of the tax must be directed to either (a) the initial rate of tax, (b) the adjustment downward of the rate, or (c) the adjustment upward of the rate. Each of these situations will be considered in the order named.

(a) The Secretary Has No Power to Fix the Initial Rate of the Tax

Section 9 (b) of the original Act, to which most of petitioners' attention is directed, fixed the rate of the processing tax at such rate as equaled the difference between the current average farm price for the commodity and the fair exchange value of the commodity. This placed upon the Secretary the duty of fixing the tax rate for each basic commodity with respect to which he proclaimed that rental and benefit payments are to be made. This is not true with respect to

rice. Section 3 of the Act of March 18, 1935, specifically provides that the processing tax with respect to rice "shall be at the rate of one cent per pound of rough rice." This provision now appears as Section 9 (b) (3) of the Act, in accordance with Section 12 of the Act of August 24, 1935. It is obvious, therefore, that no power has been delegated to the Secretary with respect to the fixing of the original tax rate, and petitioners' suggestion that the Secretary has this power is obviously without merit, not only with respect to rice, but with respect to the other commodities, the specific rate of which is fixed by Congress in paragraphs (b) (2), (4), and (5) of the Act as amended August 24, 1935.

(b) The Power of the Secretary to Adjust the Rate Downward

The taxes here involved were computed at the specific rate fixed by Congress under Section 9 (b) (3), *supra*. No adjustment whatever has been made in the rate prescribed by Congress. The petition for certiorari herein filed shows that the taxes complained of were computed on the basis of the one-cent rate fixed by Congress (Pet. 3). Since no action has been taken by the Secretary to change or in any manner affect the rate of the tax, petitioners have not been affected by those provisions of the Act as amended, providing for adjustment in the rate. Consequently, the question of the va-

lidity of such provisions is not properly involved here.[27]

In any event no question of delegation of legislative power arises with respect to the adjustment of the tax rate.

The only power to adjust the tax rate downward is prescribed in Section 9 (b) (6) (A).[28] That

[27] See *Walsh* v. *Columbus, etc., Railroad Co.*, 176 U. S. 469; *Smiley* v. *Kansas*, 196 U. S. 447, 457; *Mountain Timber Co.* v. *Washington*, 243 U. S. 219, 242; *Jeffrey Mfg. Co.* v. *Blagg*, 235 U. S. 571, 576; *District of Columbia* v. *Brooke*, 214 U. S. 138, 149, 152; *Yazoo & Miss. R. R.* v. *Jackson Vinegar Co.*, 226 U. S. 217, 219; *Plymouth Coal Co.* v. *Pennsylvania*, 232 U. S. 531, 544; *Brazee* v. *Michigan*, 241 U. S. 340, 343–344; *Gorieb* v. *Fox*, 274 U. S. 603, 606; *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282, 287; *Massachusetts* v. *Mellon*, 262 U. S. 447, 488; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, 42; *Utah Power & L. Co.* v. *Pfost*, 286 U. S. 165, 186; *Champlin Rfg. Co.* v. *Commission*, 286 U. S. 210, 234–235; *Stephenson* v. *Binford*, 287 U. S. 251, 277; *Hicklin* v. *Coney*, 290 U. S. 169, 172; *Louis. & Nash. R. R. Co.* v. *Finn*, 235 U. S. 601, 610; *United States* v. *Sullivan*, 274 U. S. 259, 264; *Oliver Iron Co.* v. *Lord*, 262 U. S. 172, 180–181. The same holds true with respect to Sections 11 and 15 (a), neither of which has been applied to rice. Moreover, as we shall show later, these two sections are relief provisions, and petitioners are in no position to object thereto. And in any event, neither of these sections contains any unlawful delegation of legislative authority.

[28] It is not true, as petitioners suggest, that under Section 9 (a) the Secretary may adjust the rate upward and downward at will. That provision applies only to the basic commodities not now subject to tax and not to the commodities the rate of tax on the processing of which is fixed in paragraphs (2) to (5), inclusive, of subsection (b) of Section 9, including rice. Furthermore, even in those cases, this provision requires all adjustments made under its terms to be in accordance with the provisions of subsection (b), which prescribes in detail the only method by which adjustments are to be made.

subdivision (A) provides that the specific rate of one cent per pound on the processing of rough rice—

> shall be decreased (including a decrease to zero) in accordance with the formulae, standards, and requirements of paragraph (1) of this subsection, in order to prevent such reduction in the quantity of such commodity or the products thereof domestically consumed as will result in the accumulation of surplus stocks of such commodity or the products thereof or in the depression of the farm price of the commodity, and shall *thereafter* be increased in accordance with the provisions of paragraph (1) of this subsection *but subject to* the provisions of subdivision (B) of this paragraph (6). (Italics supplied.)

It will be noted that all decreases in the tax rate must be made in accordance with the provisions of paragraph (b) (1) of Section 9 and that all increases must be in accordance with the same provisions of paragraph (b) (1), but *subject* to the provisions of (b) (6) (B). It will also be noted that under subdivision (A) there can be no increase in the rate of tax unless there has been first a decrease in the tax rate, and it will be noted that the Secretary has no power to decrease the rate except pursuant to findings that the tax, the rate of which has been fixed by Congress, is causing, or will cause, such a decrease in consumption as will result in the accumulation of surplus stocks or depression

in the farm price of rice after notice and opportunity for hearing. It is clear that petitioners' contention that the Secretary may decrease the rate at will is without merit. He may decrease only if he finds the foregoing facts and then only after notice and opportunity for hearing.

As pointed out above, there has been no adjustment in the tax rate, but, had any such adjustment been made, the first adjustment must have been a decrease. Any downward adjustment of the rate would not be the imposition of additional taxes but a partial relief from existing taxes. A statute which "grants the taxpayer the *benefit* of discretionary action" by an administrative official has been upheld by this Court, even though the statute was construed to preclude judicial review of the exercise of broad discretion there involved. *Heiner* v. *Diamond Alkali Co.*, 288 U. S. 502, 508. See also *Williamsport Co.* v. *United States*, 277 U. S. 551; *Blair* v. *Oesterlein Co.*, 275 U. S. 220. We submit, therefore, that petitioners are not in a position to question the beneficial provisions of the statute insofar as they relate to downward adjustments in tax rates.[29] In any event, as we shall show later, pp. 101–104, *infra*, the primary standards contained

[29] This is equally true with respect to Sections 11 and 15 (a), to which petitioners devote much attention. Section 11, after enumerating the basic commodities, provides that the Secretary shall exclude from the operation of the tax, during any period, any such commodity, if he finds, upon investigation, and after notice and opportunity for hearing, that the conditions of production, marketing and

in subdivision (b) (1), as relating to downward adjustments, are sufficiently definite so that no question of delegation of legislative authority is involved.

(c) The Power of the Secretary to Adjust the Rate Upward

The conditions attached to an upward adjustment of a tax rate are different from those attached to a downward adjustment in two respects. First, under Section 9 (b) (6) (A) an increase can be made only after a decrease. As stated above there has been no adjustment whatever so far as rice is concerned. Second, while a *decrease* in rates must be in accordance with the formulae, standards and conditions of 9 (b) (1), an *increase* under (A) must conform to certain additional conditions.

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consumption are such that during said period the Act cannot be effectively administered with respect to such commodity. Section 15 (a) provides that if at any time the Secretary finds, upon investigation and after due notice and opportunity for hearing, that any class of products of any commodity is of such low value, considering the quantity of the commodity used for their manufacture, that the imposition of the tax would prevent the use of the commodity in the manufacture of such products and thereby substantially reduce consumption and increase the surplus of the commodity, then the Secretary may cause the tax to be suspended or refunded. As stated above, neither of those sections has been used in the case of rice, and it is apparent that both sections grant relief from taxation and for this reason are unobjectionable. See also the argument at pp. 105–106 of the Government's brief in the *Butler* case, which is applicable here. In any event, it is submitted the directions are sufficiently definite so that no question of delegation is involved.

Section 9 (b) (6) (A) provides that after a decrease in the rate, such rate "shall thereafter be increased in accordance with the provisions of paragraph (1) of this subsection *but subject to* the provisions of subdivision (B) of this paragraph (6)." (Italics supplied.) We read this provision to mean that before any *upward* adjustment can be made the conditions of subdivision (B) must be met.[30]

Subdivision (B) provides:

> (B) If the average farm price of any commodity the rate of tax on the processing of which is prescribed in paragraph (2), (3), (4), or (5) of this subsection or is established pursuant to this paragraph (6), during any period of twelve successive months ending after July 1, 1935, consisting of the first ten months of any marketing year and the last two months of the preceding marketing year—
>
> (i) is equal to, or exceeds by 10 per centum or less, the fair exchange value thereof, or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6)) be adjusted, at the beginning

[30] It is to be noted that subdivision (D) of paragraph 9 (b) (6) provides that the specific tax rates may be adjusted upward in accordance with the formulae, standards, and conditions of Title I of the Act. Obviously, this means in accordance with the formulae, standards, and conditions of Section 9 (a) (6) (A) and (B), since all provisions must be read together and in harmony.

of the next succeeding marketing year, to such rate as equals 20 per centum of the fair exchange value thereof.

(ii) exceeds by more than 10 per centum, but not more than 20 per centum, the fair exchange value thereof, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6)) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 15 per centum of the fair exchange value thereof.

(iii) exceeds by more than 20 per centum the fair exchange value thereof, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6)) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 10 per centum of the fair exchange value thereof.

It is apparent from these provisions that the taxes here involved could not have been changed to the detriment of petitioners. This subdivision contains certain conditions precedent to an upward adjustment that are not present and could not be present in these cases.

The first element required by this subdivision is a time element. Before there can be an increase, there must be a period of twelve successive months ending after July 1, 1935, during which the average farm price of a commodity is equal to or exceeds the fair exchange value thereof. This twelve months' period must consist of the first ten months

of any marketing year and the last two months of the preceding marketing year. The marketing year for rice is definitely fixed in the statute as the period from August 1, to July 31, both inclusive.[31] Therefore no increase could be made in this case unless during the first ten months of the marketing year beginning August 1, 1935, and the last two months of the marketing year ending July 31, 1935, the average farm price was equal to or exceeded the fair exchange value. Hence, under this time element alone, no increase could be made in the rate of the processing tax on rice until August 1, 1936. Such a rate would not become effective until "the beginning of the next succeeding marketing year" after May 31, 1936, under the provisions of subdivision (B) (i), (ii), and (iii). Hence any adjustment upward of the rate, assuming there had first been a decrease, would not be effective until August 1, 1936. Hence, the taxes here involved were not and could not have been changed to the detriment of the petitioners. These petitioners cannot be heard to complain concerning a provision which could only operate prospectively as to some future marketing year and which has not and could not be used to their detriment during the current market-

[31] Section 9 (a) of the Act as amended by Section 2 of the Act of March 18, 1935. In the *Butler* case the contention is made that the Secretary of Agriculture is given legislative powers with respect to fixing the marketing year. The above amendment clearly removes the basis for any such contention in this case.

ing year or in reference to taxes here involved. See authorities cited, *supra,* footnote 26.

In any event the formula prescribed by subdivision (B) involves the exercise by the Secretary of no legislative powers. He is to determine only the average farm price and the fair exchange value. As pointed out in the Government's brief in the *Butler* case (pp. 49–57), the determination of these two factors from available statistics of the Department of Agriculture, involves simple mathematical computations and presents no question of legislative powers.[32]

[32] It is to be noted that the definition "fair exchange value" in Section 9(c) of the original Act was amended by Section 13 of the Act of August 24, 1935, to include the price that "will also reflect interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during said base period." The addition of these two items in the "fair exchange value" did not make the computation of that figure any the less certain and definite. Statistics previously collected by the Bureau of Agricultural Economics show these items as well as the "articles farmers buy." These figures are available not only for the base period (August 1909 to July 1914), but for current years as well. See Index Numbers of Prices, Taxes and Interest Payable by Farmers, September, 1934, and August, 1935, United States Department of Agriculturae, Bureau of Agricultural Economics. There is, of course, no merit to petitioners' contention that the Secretary is given unlimited authority to determine the base period. Section 2 (1) of the Act definitely defines the base period as the period from August 1909 to July 1914, except in the case of tobacco and potatoes, where the period is fixed at August 1919–July 1929. Section 8 (c) referred to by petitioners relates exclusively to marketing agreements and can have no possible bearing in this case.

As stated above, we construe Section 9 (b) (6) (A) to mean that no upward adjustment in the tax rate can be made unless and until the provisions of subdivision (6) (B) are met. We have already shown that the provisions of that subdivision which are conditions precedent to an upward adjusment are not and could not be present in these cases.

It has been suggested, however, that subdivision (6) (B) is not the only authority to raise rates. Subdivision (6) (D) provides that the specific rates on rice or the rate prescribed by this paragraph (6) shall be increased "in accordance with the formulae, standards, and requirements prescribed in this title." It is said that under this provision rates may be raised during the current marketing year without regard to subdivision (6) (B). But subdivision (6) (D) refers to the formulae, standards, and conditions prescribed in "this title." "This title" includes subdivision (6) (B), which is most certainly a formula and a very important one, since it provides the specific tax to be effective, to *maintain* the gains under the Act, notwithstanding the fact that "parity" has been temporarily reached. Thus it seems clear to us that the conditions of subdivision (6) (B) govern the upward adjustment of rates. Those conditions, as we have shown, are not applicable and could not be applicable to these processors prior to August 1, 1936. Further support for the view that any increase in rate is subject to the formula contained

in subdivision (6) (B) is to be found in subdivision (6) (F), which provides that after July 31, 1936, in the case of rice, "rates of tax shall be determined by the Secretary of Agriculture in accordance with the formulae, standards, and requirements prescribed in this title *but not in paragraph (6)*." It is reasonable to assume that had Congress decided that, prior to July 31, 1936, rates might be increased without regard to (6) (B), it would have employed in (6) (D) language similar to that employed in (6) (F).

But even if we assume that subdivision (6) (D) authorizes an increase without regard to subdivision (6) (B), such increase even under that authority must be in accordance with the requirements of "this title"; that is, in accordance with the requirements of subsection (b) (1).[33]

Under subsection (b) (1), there is a definite limit to the upward adjustment of the rate. The increase shall not be higher than the definite rate prescribed in the first sentence of paragraph (b) (1). That rate is the difference between the current average farm price and the fair exchange value, plus a percentage up to 20 percent of this difference, as the Secretary may determine will result in the collection of an amount of tax equal to estimated refunds allowable under Sec-

[33] There is, of course, no merit to petitioners' contention that under Section 9 (a) the Secretary can increase the rates at will. That Section requires that the rate of tax

tion 15 (c)[34] and estimated exemptions allowable to state instrumentalities.

Thus, if the current average farm price is fixed at 100 and the fair exchange value at 160, the tax rate could not be adjusted upward to more than 72, that is the difference between the current average farm price and the fair exchange value plus a percentage of not more than 20 percent of the difference to take care of estimated refunds, credits, and tax exemptions. It is seen, therefore, that the upward adjustment is definitely limited and this limit is definitely ascertainable.[35] There is a definite level or "ceiling" beyond which the Secretary may never go.[36]

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shall *conform to the requirements* of subdivision (b). The rate so determined shall, at such intervals as the Secretary finds necessary to effectuate the declared policy, be adjusted by him to *conform to such requirements.* Clearly this permits the Secretary to adjust only in accordance with subsection (b). It is to be observed that under subdivision (6) (F), the formula in subsection (b) (1) are alone applicable after July 31, 1936, in the case of rice.

[34] Section 15 (c) provides for refunds to persons delivering to charitable organization products with respect to which a processing tax has been paid.

[35] As pointed out above p. 97, current average farm price and fair exchange value are matters of mathematical computations, ascertainable from available records in the Department of Agriculture. The less important factors of estimated credits, refunds, and tax exemptions may be determined from statistics and other information based on past experience.

[36] Of course there is no merit to petitioners' contention that under Section 9 (a) the Secretary can raise the rate to

Considering this limit on the upward adjustment of the tax rate in connection with the positive direction of Congress set forth in subsection (b) (1), it is submitted that no abdication of legislative powers is to be found in that subsection.

The directions in subsection (b) (1) are that, if the Secretary of Agriculture has reason to believe that the one cent rate on rice will cause or is causing such a reduction in rice consumption as will result in an accumulation of surplus stocks of rice or in the depression of the farm price, then he shall cause an appropriate investigation to be made, and afford due notice and opportunity for hearing to interested parties. If, thereupon, the Secretary determines and proclaims that any such result will occur or is occurring, then the processing tax shall be at such lower rate as he determines and proclaims will prevent such accumulation of surplus stocks and depression of the farm price. After such a decrease, subsection (b) (1) provides that the tax shall remain at such lower rate

> until the Secretary, after due notice and opportunity for hearing to interested parties, determines and proclaims that an increase in the rate of such tax will not cause such accumulation of surplus stocks or depression of the farm price of the commodity.

---

a point above this limit. Section 9 (a) provides that all adjustments shall "conform to the requirements of subsection (b)." Furthermore, subsection (a) is not applicable to rice.

> Thereafter the processing tax shall be at the highest rate which the Secretary determines will not cause such accumulation of surplus stocks or depression of the farm price of the commodity, but it shall not be higher than the rate provided in the first sentence of this paragraph.

Thus, both the decrease and the subsequent increase are governed by very definite directions. He cannot, as petitioners suggest, adjust the rate at will. He must, after hearings and investigation, fix the rate at a figure that will not cause such a reduction in domestic consumption of rice as will result in an accumulation of surplus stocks or depression in farm price. We submit the "primary standard" here set forth is sufficiently definite so that no question of unlawful delegation is involved.

Congress obviously patterned the procedure to be followed here upon the provisions of the present Tariff Act, the precursor of which was sustained in *Hampton & Co.* v. *United States,* 276 U. S. 394.[37] An investigation involving hearings and notice is required here as it was in that Act. It is submitted that the determination required is of no less certainty than that required by the Tariff Act of 1922 and is equally within the special competence of the experts of the Department of Agriculture as the

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[37] See H. Rep. No. 6, 73d Cong., 1st Sess., p. 5: "In their legal aspects these flexible tax provisions are similar to the provisions of the Tariff Act of 1930 providing for the flexible tariff."

determination under the Tariff Act was within that of the Tariff Commission.

Tendencies toward reduction in consumption caused by a high rate of tax are found by observation of the curve of consumption over a period as compared with the curve of increase in costs. The likelihood of accumulation of surplus stocks and consequent depreciation of farm price is determined from the trend of these curves and from statistics showing certain results when these curves reach a certain point; for example, the use by manufacturers of substitutes or a decrease in purchases by consumers. By the use of these statistics and the information and facts gathered at the hearings provided for by the statute, the Secretary is enabled to determine with sufficient certainty the facts upon which Congress has made the rate to depend. Should it be impossible for the Secretary to determine whether any reduction in consumption will result, clearly the tax must remain at the rate provided for in the Act.

The standards and directions set forth in this subsection would appear to be as definite as many standards heretofore sustained by this Court. *Radio Comm'n* v. *Nelson Bros. Co.*, 289 U. S. 266, 285 (public convenience, interest, or necessity); *Avent* v. *United States*, 266 U. S. 127, and *United States* v. *Chemical Foundation*, 272 U. S. 1 (in the public interest); *Tagg Bros.* v. *United States*, 280 U. S. 420 (just and reasonable commissions); *Buttfield* v. *Stranahan*, 192 U. S. 470 (purity, quality,

and fitness for consumption); *Union Bridge Co.* v. *United States,* 204 U. S. 364 (unreasonable obstruction to navigation); *Wayman* v. *Southard,* 10 Wheat. 1 (in their discretion deemed expedient); *Mahler* v. *Eby,* 264 U. S. 32 (undesirable resident). Cf. *United States* v. *Shreveport Grain & El. Co.,* 287 U. S. 77, 82, sustaining the validity of a provision in the Food and Drugs Act giving authority to administrative officers "to make rules and regulations permitting reasonable variations from the hard and fast rule of the Act."

In any event, assuming subsection (b) (1) does contain an unlawful delegation of legislative authority, petitioners are not in a position to object thereto. We have already shown that no adjustment whatever has been made as to rice. We have also shown that, in our view, subsection (b) (1) is not applicable and that the unobjectionable provisions of subparagraph (6) (B) control all upward increase. But aside from all this, and assuming the applicability of (b) (1) and assuming that petitioners may object thereto, and further assuming that subsection (b) (1) does delegate legislative authority, still it is to be noted that this provision is entirely separable from the rest of the Act. It is significant that since March 18, 1935, no adjustments have been made with respect to rice.[38]

[38] In fact no adjustment has been made with respect to any of the basic commodities, since the adoption of the amendment of August 24, 1935, except in the case of tobacco. There the provisions of subdivision (6) (B) were applicable and were applied. Tobacco Regulations, Series 1, No. 3.

This indicates that the adjustment in the rice taxes is not necessary. By Section 14 of the Act Congress has said that if any provision of the Act is declared invalid, the validity of the remainder shall not be affected thereby. It is plain that if the adjustments provisions were eliminated "a workable plan" for the raising of revenue "would still remain." See *Weller* v. *New York,* 268 U. S. 319, 325. Cf. *Champlin Rfg. Co.* v. *Commission,* 286 U. S. 210, 235.

Moreover, subdivision (G) of paragraph (6) provides that, if the Secretary adjusts the rate of tax under the powers given him by paragraph (6), and if such action is held invalid by reason of any provision of the Constitution, or by reason of the fact that the Secretary wrongfully exercised or failed to exercise any of his powers, then *the rates of tax fixed by paragraphs (2), (3), (4), or (5) shall remain in effect until altered by Congress.* Thus, even if the adjustment provisions be unconstitutional, petitioners cannot be heard to complain, since the one-cent rate, which is fixed by Congress and which has not been altered, would continue to be the rate.

We submit the rate-adjustment provisions contain no abdication of legislative powers; and even if they did, petitioners are not in a position to urge their invalidity.

4. *No legislative powers have been delegated to the Secretary of Agriculture with respect to the termination of the tax or with respect to the spending of the revenues derived from the tax*

In the Government's brief in the *Butler* case it is pointed out (pp. 105–106) that the taxes are not invalid by reason of the provision respecting the termination thereof. Furthermore, in the case of rice, Section 3 of the Act of March 18, 1935, adopted by Section 12 of the Act of August 24, 1935, specifically provides that the processing tax in respect to rice shall be in effect for the period from April 1, 1935, to July 31, 1936. If a rate of tax is determined by the Secretary of Agriculture pursuant to the formula of Section 9 (b) (1) on or after August 1, 1936, and if such action is deemed to have been taken pursuant to a delegation of legislative power, then the rate of tax of one cent per pound fixed by Congress remains in effect until ordered by Act of Congress. (Subdivision 9 (b) (6) (G).) These provisions maintain unless the tax is terminated by proclamation of the President or of the Secretary of Agriculture. With respect to any termination by the Secretary, it is to be noted that, under Section 8 (4) of the Act, added by the amendments of August 24, 1935, the proclamation of the Secretary under Section 9 (a) which will terminate the tax, may be issued only after a notice and opportunity for hearing to interested parties and a finding of the facts required therein to be found.

It is also shown in the Government's brief in the *Butler* case (pp. 90–101) that after an appropriation by Congress, the expenditure of public funds is an executive and not a legislative function and hence the discretion involved in the making of rental and benefit payments could not involve the legislative powers. For the reasons there discussed, we submit no question of delegation arises with respect either to the termination of the tax or with respect to the spending of the revenues derived from the tax.

From the foregoing it is seen that the basis of many of the objections raised by the taxpayers in the *Butler* case, with respect to the question of delegation, have been removed by the amendment to the Agricultural Adjustment Act, and by the specific provisions relating to rice. We respectfully urge that no unlawful delegation of legislative authority is involved in these cases. The tax being otherwise valid for the reasons set forth at length in the Government's brief in the *Butler* case, it is submitted that no basis exists to enjoin the collection of these taxes.

CONCLUSION

The decisions below should be affirmed.

Respectfully submitted.

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DECEMBER 1935.

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Supreme Court
FILED
DEC 14 1
CHARLES ELMORE

Nos. 577-581, 585-587

In the Supreme Court of the United States

OCTOBER TERM, 1935

RICKEET RICE MILLS, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

A. B. DORE, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

UNITED RICE MILLING PRODUCTS CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

BATON ROUGE RICE MILL, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

T. SIMON, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

LEVY RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

FARMERS RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

NOBLE-TROTTER RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX TO THE BRIEF FOR THE RESPONDENT

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PART A

AGRICULTURAL ADJUSTMENT ACT, C. 25, 48 STAT. 31, AS AMENDED, AS OF AUGUST 24, 1935[1]

AN ACT

To relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—AGRICULTURAL ADJUSTMENT

DECLARATION OF EMERGENCY

That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously im-

[1] Throughout this document italics are used to indicate matter added by the 74th Congress by way of amendment to the Agricultural Adjustment Act, as previously amended. In instances where the language was stricken or changed, heavy black brackets are used to indicate the deleted matter.

paired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities, and render imperative the immediate enactment of title I of this Act. (U. S. C., Title 7, Sec. 601.)

DECLARATION OF POLICY

SEC. 2. It is hereby declared to be the policy of Congress—

(1) [To] *Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to* establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; *and, in the case of all commodities for which the base period is the pre-war period, August 1909 to July 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during the base period.* The base period in the case of all agricultural commodities except tobacco *and potatoes* shall be the prewar period, August 1909–July 1914. In the

case of tobacco *and potatoes*,[2] the base period shall be the postwar period, August 1919–July 1929.

[(2) To approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets.

(3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the pre-war period, August 1909–July 1914.]

(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section.[3] (U. S. C., Title 7, Sec. 602.)

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[2] As amended by Sec. 1 (a) and Sec. 62 of Public No. 320, 74th Cong., 1st Sess., approved August 24, 1935, entitled "An Act to amend the Agricultural Adjustment Act, and for other purposes." Sec. 62 adds the words " and potatoes."

[3] As amended by Sec. 1 (b) of Public No. 320, 74th Cong., 1st Sess.

PART 2—COMMODITY BENEFITS

GENERAL POWERS

SEC. 8. [In order to effectuate the declared policy, the Secretary of Agriculture shall have power—

(1) To provide for reduction in the acreage or reduction in the production for market, or both, of any basic agricultural commodity, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith or upon that part of the production of any basic agricultural commodity required for domestic consumption, in such amounts as the Secretary deems fair and reasonable, to be paid out of any moneys available for such payments;[1] and, in the case of sugar beets or sugarcane, in the event that it shall be established to the satisfaction of the Secretary of Agriculture that returns to growers or producers, under the contracts for the 1933–1934 crop of sugar beets or sugarcane, entered into by and between the processors and producers and/or growers thereof, were reduced by reason of the payment of the processing tax, and/or the corresponding floor-stocks tax, on sugar beets or sugarcane, in addition to the foregoing rental or benefit payments, to make such payments, representing in whole or in part such tax, as the Secretary deems fair and reasonable, to producers who agree, or have agreed,

[1] The remainder of this sentence was added by the Act of May 9, 1934, c. 263, 48 Stat. 670, Sec. 14.

to participate in the program for reduction in the acreage or reduction in the production for market, or both, of sugar beets or sugarcane. *In the case of rice, the Secretary, in exercising the discretion conferred upon him by this section to provide for rental or benefit payments, is directed to provide in any agreement entered into by him with any rice producer pursuant to this section, upon such terms and conditions as the Secretary determines will best effectuate the declared policy of the Act, that the producer may pledge for production credit in whole or in part his right to any rental or benefit payments under the terms of such agreement and that such producer may designate therein a payee to receive such rental or benefit payments.*[5] Under regulations of the Secretary of Agriculture requiring adequate facilities for the storage of any nonperishable agricultural commodity on the farm, inspection and measurement of any such commodity so stored, and the locking and sealing thereof, and such other regulations as may be prescribed by the Secretary of Agriculture for the protection of such commodity and for the marketing thereof, a reasonable percentage of any benefit payment may be advanced on any such commodity so stored. In any such case, such deduction may be made from the amount of the benefit payment as the Secretary of Agriculture determines will reasonably compensate for the cost of inspection

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[5] This amendment was made by Sec. 7 of Public No. 20, 74th Cong., 1st Sess., approved March 18, 1935, but this entire subsection (1) was stricken out by Sec. 2 of Public No. 320, 74th Cong., 1st Sess., and subsections (1) to (9), inclusive, were inserted in lieu thereof.

and sealing, but no deduction may be made for interest.]

(1) Whenever the Secretary of Agriculture has reason to believe that:

(a) The current average farm price for any basic agricultural commodity is less than the fair exchange value thereof, or the average farm price of such commodity is likely to be less than the fair exchange value thereof for the period in which the production of such commodity during the current or next succeeding marketing year is normally marketed, and

(b) The conditions of and factors relating to the production, marketing, and consumption of such commodity are such that the exercise of any one or more of the powers conferred upon the Secretary under subsections (2) and (3) of this section would tend to effectuate the declared policy of this title,

he shall cause an immediate investigation to be made to determine such facts. If, upon the basis of such investigation, the Secretary finds the existence of such facts, he shall proclaim such determination and shall exercise such one or more of the powers conferred upon him under subsections (2) and (3) of this section as he finds, upon the basis of an investigation, administratively practicable and best calculated to effectuate the declared policy of this title.

(2) Subject to the provisions of subsection (1) of this section, the Secretary of Agriculture shall provide, through agreements with producers or by other voluntary methods,

(a) For such adjustment in the acreage or in the production for market, or both, of any basic agricultural commodity, as he finds, upon the basis of the investigation made pursuant to subsection (1) of this section, will tend to effectuate the declared policy of this title, and to make such adjustment program practicable to operate and administer, and

(b) For rental or benefit payments in connection with such agreements or methods in such amounts as he finds, upon the basis of such investigation, to be fair and reasonable and best calculated to effectuate the declared policy of this title and to make such program practicable to operate and administer, to be paid out of any moneys available for such payments or, subject to the consent of the producer, to be made in quantities of one or more basic agricultural commodities acquired by the Secretary pursuant to this title.

(3) Subject to the provisions of subsection (1) of this section, the Secretary of Agriculture shall make payments, out of any moneys available for such payments, in such amounts as he finds, upon the basis of the investigation made pursuant to subsection (1) of this section, to be fair and reasonable and best calculated to effectuate the declared policy of this title:

(a) To remove from the normal channels of trade and commerce quantities of any basic agricultural commodity or product thereof;

(b) To expand domestic or foreign markets for any basic agricultural commodity or product thereof;

(c) In connection with the production of that part of any basic agricultural commodity which is required for domestic consumption.

(4) Whenever, during a period during which any of the powers conferred in subsection (2) or (3) is being exercised, the Secretary of Agriculture has reason to believe that, with respect to any basic agricultural commodity:

(a) The current average farm price for such commodity is not less than the fair exchange value thereof, and the average farm price for such commodity is not likely to be less than the fair exchange value thereof for the period in which the production of such commodity during the current or next succeeding marketing year is normally marketed, or

(b) The conditions of and factors relating to the production, marketing, and consumption of such commodity are such that none of the powers conferred in subsections (2) and (3), and no combination of such powers, would, if exercised, tend to effectuate the declared policy of this title,

he shall cause an immediate investigation to be made to determine such facts. If, upon the basis of such investigation, the Secretary finds the existence of such facts, he shall proclaim such determination, and shall not exercise any of such powers with respect to such commodity after the end of the marketing year current at the time when such proclamation is made and prior to a new proclamation

under subsection (1) of this section, except insofar as the exercise of such power is necessary to carry out obligations of the Secretary assumed, prior to the date of such proclamation made pursuant to this subsection, in connection with the exercise of any of the powers conferred upon him under subsections (2) or (3) of this section.

(5) In the course of any investigation required to be made under subsection (1) or subsection (4) of this section, the Secretary of Agriculture shall hold one or more hearings, and give due notice and opportunity for interested parties to be heard.

(6) No payment under this title made in an agricultural commodity acquired by the Secretary in pursuance of this title shall be made in a commodity other than that in respect of which the payment is being made. For the purposes of this subsection, hogs and field corn may be considered as one commodity.

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(8) In the case of rice, the Secretary of Agriculture, in exercising the power conferred upon him by subsection (2) of this section to provide for rental or benefit payments, is directed to provide in any agreement entered into by him with any rice producer pursuant to such subsection, upon such terms and conditions as the Secretary determines will best effectuate the declared policy of this title, that the producer may pledge for production credit, in whole or in part, his right to any rental or benefit payments under the terms of such agreement and that such producer may designate therein a payee to receive such rental or benefit payments.

(9) Under regulations of the Secretary of Agriculture requiring adequate facilities for the storage

of any nonperishable agricultural commodity on the farm, inspection and measurement of any such commodity so stored, and the locking and sealing thereof, and such other regulations as may be prescribed by the Secretary of Agriculture for the protection of such commodity and for the marketing thereof, a reasonable percentage of any benefit payment may be advanced on any such commodity so stored. In any such case, such deduction may be made from the amount of the benefit payment as the Secretary of Agriculture determines will reasonably compensate for the cost of inspection and sealing but no deduction may be made for interest.[6]

* * * * *

[(2)] *Sec. 8b.* [After due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, in the current of or in competition with, or so as to burden, obstruct, or in any way affect, interstate or foreign commerce.[7]] *In order to effectuate the declared policy of this title, the Secretary of Agriculture shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, only with respect to such handling as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects interstate or foreign commerce in such com-*

[6] Added by Sec. 2 of Public No. 320, 74th Cong., 1st Sess.

[7] As amended by the Act of April 7, 1934, c. 103, 48 Stat. 528, Sec. 7.

modity or product thereof.[8] The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful: *Provided,* That no such agreement shall remain in force after the termination of this Act. For the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under section 5 of the Reconstruction Finance Corporation Act. Such loans shall not be in excess of such amounts as may be authorized by the agreements.

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Sec. 8c.

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(*16*) * * *

(*B*) *The Secretary shall terminate any marketing agreement entered into under section 8b, or order issued under this section, at the end of the then current marketing period for such commodity, specified in such marketing agreement or order, whenever he finds that such termination is favored by a majority of the producers who, during a representative period determined by the Secretary, have been engaged in the production for market of the commodity specified in such marketing agreement or order, within the production area specified in such marketing agreement or order, or who, during such representative period, have been engaged in the production of such commodity for sale within the marketing area specified in such marketing agreement or order: Provided, That such majority*

[8] As amended by Sec. 4 of Public No. 320, 74th Cong., 1st Sess.

have, during such representative period, produced for market more than 50 per centum of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or have, during such representative period, produced more than 50 per centum of the volume of such commodity sold in the marketing area specified in such marketing agreement or order, but such termination shall be effective only if announced on or before such date (prior to the end of the then current marketing period) as may be specified in such marketing agreement or order.

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PROVISIONS APPLICABLE TO AMENDMENTS

(17) The provisions of this section, section 8d, and section 8e applicable to orders shall be applicable to amendments to orders: Provided, That notice of a hearing upon a proposed amendment to any order issued pursuant to section 8c, given not less than three days prior to the date fixed for such hearing, shall be deemed due notice thereof.[9]

* * * * *

BOOKS AND RECORDS

Sec. 8d. (1) All parties to any marketing agreement, and all handlers subject to an order, shall severally, from time to time, upon the request of the Secretary, furnish him with such information as he finds to be necessary to enable him to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated the declared policy of this title, and with such information as he finds to be necessary to

[9] As amended by Sec. 5 of Public No. 320, 74th Cong., 1st Sess.

determine whether or not there has been any abuse of the privilege of exemptions from the antitrust laws. Such information shall be furnished in accordance with forms of reports to be prescribed by the Secretary. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this subsection, or for the purpose of obtaining the information required in any such report, where it has been requested and has not been furnished, the Secretary is hereby authorized to examine such books, papers, records, copies of income-tax reports, accounts, correspondence, contracts, documents, or memoranda, as he deems relevant and which are within the control (1) of any such party to such marketing agreement, or any such handler, from whom such report was requested or (2) of any person having, either directly or indirectly, actual or legal control of or over such party or such handler or (3) of any subsidiary of any such party, handler, or person.

(2) Notwithstanding the provisions of section 7, all information furnished to or acquired by the Secretary of Agriculture pursuant to this section shall be kept confidential by all officers and employees of the Department of Agriculture and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which he or any officer of the United States is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (A) the

issuance of general statements based upon the reports of a number of parties to a marketing agreement or of handlers subject to an order, which statements do not identify the information furnished by any person, or (B) the publication by direction of the Secretary, of the name of any person violating any marketing agreement or any order, together with a statement of the particular provisions of the marketing agreement or order violated by such person. Any such officer or employee violating the provisions of this section shall upon conviction be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office.

DETERMINATION OF BASE PERIOD

Sec. 8e. In connection with the making of any marketing agreement or the issuance of any order, if the Secretary finds and proclaims that, as to any commodity specified in such marketing agreement or order, the purchasing power during the base period specified for such commodity in section 2 of this title cannot be satisfactorily determined from available statistics of the Department of Agriculture, the base period, for the purposes of such marketing agreement or order, shall be the postwar period, August 1919–July 1929, or all that portion thereof for which the Secretary finds and proclaims that the purchasing power of such commodity can be satisfactorily determined from available statistics of the Department of Agriculture.[10]

[(5)] *Sec. 8f.*[11] No person engaged in the storage in a public warehouse of any basic agricultural

[10] As amended by Sec. 6 of Public No. 320, 74th Cong., 1st Sess.

commodity in the current of interstate or foreign commerce, shall deliver any such commodity upon which a warehouse receipt has been issued and is outstanding, without prior surrender and cancellation of such warehouse receipt. Any person violating any of the provisions of this subsection shall, upon conviction, be punished by a fine of not more than $5,000, or by imprisonment for not more than two years, or both. [The Secretary of Agriculture may revoke any license issued under subsection (3) of this section, if he finds, after due notice and opportunity for hearing, that the licensee has violated the provisions of this subsection.][11] (U. S. C., Title 7, Sec. 608.)

PROCESSING TAX

SEC. 9. (a) To obtain revenue for extraordinary expenses incurred by reason of the national economic emergency, there shall be levied processing taxes as hereinafter provided. [When the Secretary of Agriculture determines that rental or benefit payments are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation.] *When the Secretary of Agriculture determines that any one or more payments authorized to be made under section 8 are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to*

[11] As amended by Sec. 7 of Public No. 320, 74th Cong., 1st Sess.

such commodity from the beginning of the marketing year therefor next following the date of such proclamation; except that [,] *(1)* in the case of sugar beets and sugarcane, the Secretary of Agriculture shall, on or before the thirtieth day after the adoption of this amendment, proclaim that rental or benefit payments with respect to said commodities are to be made, and the processing tax shall be in effect on and after the thirtieth day after the date of the adoption of this amendment [.], *and (2) in the case of rice the Secretary of Agriculture shall, before April 1, 1935, proclaim that rental or benefit payments are to be made with respect thereto, and the processing tax shall be in effect on and after April 1, 1935.* In the case of sugar beets and sugarcane, the calendar year shall be considered to be the marketing year and for the year 1934 the marketing year shall begin January 1, 1934. *In the case of rice, the period from August 1 to July 31, both inclusive, shall be considered to be the marketing year.* The processing tax shall be levied, assessed, and collected upon the first domestic processing of the commodity, whether of domestic production or imported, and shall be paid by the processor. The rate of tax shall conform to the requirements of subsection (b). Such rate shall be determined by the Secretary of Agriculture as of the date the tax first takes effect, and the rate so determined shall, at such intervals as the Secretary finds necessary to effectuate the declared policy, be adjusted by him to conform to such requirements. The processing tax shall terminate at the end of the marketing year current at the time the Secretary proclaims that [rental or benefit payments] *all payments author-*

ized under section 8 which are in effect [12] are to be discontinued with respect to such commodity. The marketing year for each commodity shall be ascertained and prescribed by regulations of the Secretary of Agriculture: *Provided,* That upon any article upon which a manufacturers' sales tax is levied under the authority of the Revenue Act of 1932 and which manufacturers' sales tax is computed on the basis of weight, such manufacturers' sales tax shall be computed on the basis of the weight of said finished article less the weight of the processed cotton contained therein on which a processing tax has been paid.

[(b) The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity; except that (*1*) if the Secretary has reason to believe that the tax at such rate on the processing of the commodity generally or for any particular use or uses will cause such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depression of the farm price of the commodity, then he shall cause an appropriate investigation to be made and afford due notice and opportunity for hearing to interested parties[. If], *and if* thereupon the Secretary finds that any such result will occur, then the processing tax on the processing of the commodity generally, or for any designated use or uses, or as to

[12] As amended by Secs. 1 and 2 of Public No. 20, 74th Cong., 1st Sess., and by Sec. 11 of Public No. 320, 74th Cong., 1st Sess.

any designated product or products thereof for any designated use or uses, shall be at such rate as will prevent such accumulation of surplus stocks and depression of the farm price of the commodity[13] [.] , *and (2) for the period from April 1, 1935, to July 31, 1936, both inclusive, the processing tax with respect to rice shall be at the rate of 1 cent per pound of rough rice, subject, however, to any modification of such rate which may be made pursuant to any other provision of this title.* In computing the current average farm price in the case of wheat, premiums paid producers for protein content shall not be taken into account. *In the case of rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to a processor, except that where the producer processes his own rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to the place of processing.*[14] In the case of sugar beets or sugarcane the rate of tax shall be applied to the direct-consumption sugar, resulting from the first domestic processing, translated into terms of pounds of raw value according to regulations to be issued by the Secretary of Agriculture, and the rate of tax to be so applied shall be the higher of the two following quotients: The difference between the current average farm price and the fair-exchange value (1) of a ton of sugar beets and (2) of a ton of sugarcane, divided in the case of each commodity by the

[13] As amended by the Act of May 9, 1934, c. 263, 48 Stat. 670, Sec. 8.

[14] As amended by Secs. 3 and 4 of Public No. 20, 74th Cong., 1st Sess.

average extraction therefrom of sugar in terms of pounds of raw value (which average extraction shall be determined from available statistics of the Department of Agriculture); except that such rate shall not exceed the amount of the reduction by the President on a pound of sugar raw value of the rate of duty in effect on January 1, 1934, under paragraph 501 of the Tariff Act of 1930, as adjusted to the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on December 11, 1902, and/or the provisions of the Act of December 17, 1903, chapter 1.][15]

TAX RATE GENERALLY

(b) (1) The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, plus such percentage of such difference, not to exceed 20 per centum, as the Secretary of Agriculture may determine will result in the collection, in any marketing year with respect to which such rate of tax may be in effect pursuant to the provisions of this title, of an amount of tax equal to (A) the amount of credits or refunds which he estimates will be allowed or made during such period pursuant to section 15 (c) with respect to the commodity and (B) the amount of tax which he estimates would have been collected during such period upon all processings of such commodity which are exempt from tax by reason of the fact that such processings are done by or for a State, or a political subdivision or an insti-

[15] As amended by the Act of May 9, 1934, c. 263, 48 Stat. 670, Sec. 3.

tution thereof, had such processings been subject to tax. If, prior to the time the tax takes effect, or at any time thereafter, the Secretary has reason to believe that the tax at such rate, or at the then existing rate, on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, will cause or is causing such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depression of the farm price of the commodity, then the Secretary shall cause an appropriate investigation to be made, and afford due notice and opportunity for hearing to interested parties. If thereupon the Secretary determines and proclaims that any such result will occur or is occurring, then the processing tax on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be at such lower rate or rates as he determines and proclaims will prevent such accumulation of surplus stocks and depression of the farm price of the commodity, and the tax shall remain during its effective period at such lower rate until the Secretary, after due notice and opportunity for hearing to interested parties, determines and proclaims that an increase in the rate of such tax will not cause such accumulation of surplus stocks or depression of the farm price of the commodity. Thereafter the processing tax shall be

at the highest rate which the Secretary determines will not cause such accumulation of surplus stocks or depression of the farm price of the commodity, but it shall not be higher than the rate provided in the first sentence of this paragraph.

* * * * *

SPECIFIC TAX RATE—RICE

(3) For the period from April 1, 1935, to July 31, 1936, both inclusive, the processing tax with respect to rice shall be levied, assessed, collected, and paid at the rate of 1 cent per pound of rough rice.

* * * * *

ADJUSTMENT OF RATE

(6) (A) Any rate of tax which is prescribed in paragraph (2), (3), (4), or (5) of this subsection or which is established pursuant to this paragraph (6) on the processing of any commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be decreased (including a decrease to zero) in accordance with the formulae, standards, and requirements of paragraph (1) of this subsection, in order to prevent such reduction in the quantity of such commodity or the products thereof domestically consumed as will result in the accumulation of surplus stocks of such commodity or the products thereof or in the depression of the farm price of the commodity, and shall thereafter be increased in accordance with the provisions of paragraph (1) of this subsection but subject to the provisions of subdivision (B) of this paragraph (6).

(B) If the average farm price of any commodity, the rate of tax on the processing of which is prescribed in paragraph (2), (3), (4), or (5) of this subsection or is established pursuant to this paragraph (6), during any period of twelve successive months ending after July 1, 1935, consisting of the first ten months of any marketing year and the last two months of the preceding marketing year—

(i) is equal to, or exceeds by 10 per centum or less, the fair exchange value thereof, or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6)) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 20 per centum of the fair exchange value thereof.

(ii) exceeds by more than 10 per centum, but not more than 20 per centum, the fair exchange value thereof, the rate of such tax shall (subject to the provisions of subdivisions (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 15 per centum of the fair exchange value thereof.

(iii) exceeds by more than 20 per centum the fair exchange value thereof, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6)) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 10 per centum of the fair exchange value thereof.

(C) Any rate of tax which has been adjusted pursuant to this paragraph (6) shall remain at such adjusted rate unless further adjusted or terminated pursuant to this paragraph (6), until December 31, 1937, or until July 31, 1936, in the case of rice.

(D) In accordance with the formulae, standards, and requirements prescribed in this title, any rate of tax prescribed in paragraph (2), (3), (4), or (5) of this subsection or which is established pursuant to this paragraph (6) shall be increased.

(E) Any tax, the rate of which is prescribed in paragraph (2), (3), (4), or (5) of this subsection or which is established pursuant to this paragraph (6), shall terminate pursuant to proclamation as provided in section 9 (a) of this title or pursuant to section 13 of this title. Any such tax with respect to any basic commodity which terminates pursuant to proclamation as provided in section 9 (a) of this title shall again become effective at the rate prescribed in paragraph (2), (3), (4), or (5) of this subsection, subject, however to the provisions of subdivisions (A) and (B) of this paragraph (6), from the beginning of the marketing year for such commodity next following the date of a new proclamation by the Secretary as provided in section 9 (a) of this title, if such marketing year begins prior to December 31, 1937, or prior to July 31, 1936, in the case of rice, and shall remain at such rate until altered or terminated pursuant to the provisions of section 9 or terminated pursuant to section 13 of this title.

(F) After December 31, 1937 (in the case of the commodities specified in paragraphs (2), (4), and (5) of this subsection), and after July 31, 1936 (in

the case of rice), rates of tax shall be determined by the Secretary of Agriculture in accordance with the formulae, standards, and requirements prescribed in this title but not in this paragraph (6), and shall, subject to such formulae, standards, and requirements, thereafter be effective.

(G) If the applicability to any person or circumstances of any tax, the rate of which is fixed in pursuance of this paragraph (6), is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be levied, assessed, collected, and paid (in lieu of all rates of tax fixed in pursuance of this paragraph (6) with respect to all tax liabilities incurred under this title on or after the effective date of each of the rates of tax fixed in pursuance of this paragraph (6)), rates of tax fixed under paragraph (2), (3), (4), or (5), and such rates shall be in effect (unless the particular tax is terminated pursuant to proclamation, as provided in section 9 (a) or pursuant to section 13) until altered by Act of Congress; except that, for any period prior to the effective date of such holding of invalidity, the amount of tax which represents the difference between the tax at the rate fixed in pursuance of this paragraph (6) and the tax at the rate fixed under paragraphs (2), (3), (4), and (5) shall not be levied, assessed, collected, or paid.

RICE—SPECIAL RULE

(7) In the case of rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to a processor, except

that, where the producer processes his own rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to the place of processing.[16]

* * * * *

[(c) For the purposes of part 2 of this title, the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period specified in section 2; and the current average farm price and the fair exchange value shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture.]

(c) For the purposes of part 2 of this title, the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period specified in section 2; and, in the case of all commodities where the base period is the pre-war period, August 1909 to July 1914, will also reflect interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during said base period; and the current average farm price and the fair exchange value shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture. The rate of tax upon the processing of any commodity, in effect on the date on which this amendment is

[16] As amended by Sec. 12 of Public No. 320, 74th Cong., 1st Sess.

adopted, shall not be affected by the adoption of this amendment and shall not be required to be adjusted or altered, unless the Secretary of Agriculture finds that it is necessary to adjust or alter any such rate pursuant to section 9 (a) of this title.[17]

(d) As used in part 2 of this title—

(1) In case of wheat [, rice,], *rye, barley,* and corn, the term "processing" means the milling or other processing (except cleaning and drying) of wheat [, rice,], *rye, barley,*[18] or corn for market, including custom milling for toll as well as commercial milling, but shall not include the grinding or cracking thereof not in the form of flour for feed purposes only.

* * * * *

(7) In the case of rice—

(A) The term "rough rice" means rice in that condition which is usual and customary when delivered by the producer to a processor.

(B) The term "processing" means the cleaning, shelling, milling (including custom milling for toll as well as commercial milling), grinding, rolling, or other processing (except grinding or cracking by or for the producer thereof for feed for his own livestock, cleaning by or directly for a producer for seed purposes, and drying) of rough rice; and in the case of rough rice with respect to which a tax-payment warrant has been previously issued or applied for by application then pending, the

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[17] As amended by Sec. 13 of Public No. 320, 74th Cong., 1st Sess.

[18] Sec. 5 of Public No. 20, 74th Cong., 1st Sess., strikes out the word " rice "; Sec. 14 (a) of Public No. 320, 74th Cong., 1st Sess., inserts the words " rye, barley ".

term "processing" means any one of the above mentioned processings or any preparation or handling in connection with the sale or other disposition thereof.

(C) The term "cooperating producer" means any person (including any share-tenant or share-cropper) whom the Secretary of Agriculture finds to be willing to participate in the 1935 production-adjustment program for rice.

(D) The term "processor", as used in subsection (b–1) of section 15 of this title, means any person (including a cooperative association of producers) engaged in the processing of rice on a commercial basis (including custom milling for toll as well as commercial milling).[19]

[(7)] *(8)*[20] In the case of any other commodity, the term "processing" means any manufacturing or other processing involving a change in the form of the commodity or its preparation for distribution or use, as defined by regulations of the Secretary of Agriculture; and in prescribing such regulations the Secretary shall give due weight to the customs of the industry.[21]

(e) When any processing tax, or increase or decrease therein, takes effect in respect of a commodity the Secretary of Agriculture, in order to prevent pyramiding of the processing tax and profiteering in the sale of the products derived

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[19] Sec. 6 of Public No. 20, 74th Cong., 1st Sess., adds paragraph 7.

[20] Sec. 6 of Public No. 20, 74th Cong., 1st Sess., renumbers paragraph "(7)" to "(8)."

[21] As amended by the Act of June 26, 1934, c. 759, 48 Stat. 1241, Sec. 2.

from the commodity, shall make public such information as he deems necessary regarding (1) the relationship between the processing tax and the price paid to producers of the commodity, (2) the effect of the processing tax upon prices to consumers of products of the commodity, (3) the relationship, in previous periods, between prices paid to the producers of the commodity and prices to consumers of the products thereof, and (4) the situation in foreign countries relating to prices paid to producers of the commodity and prices to consumers of the products thereof.

(f) For the purposes of part 2 of this title, processing shall be held to include manufacturing[22] (U. S. C., Title 7, Sec. 609).

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MISCELLANEOUS

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SEC. 10. (c) The Secretary of Agriculture is authorized, with the approval of the President, to make such regulations with the force and effect of law as may be necessary to carry out the powers vested in him by this title, including regulations establishing conversion factors for any commodity and article processed therefrom to determine the amount of tax imposed or refunds to be made with respect thereto. Any violation of any regulation shall be subject to such penalty, not in excess of $100, as may be provided therein.

(d) The Secretary of the Treasury is authorized to make such regulations as may be necessary to carry out the powers vested in him by this title.

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[22] Added by the Act of May 9, 1934, c. 263, 48 Stat. 670, Sec. 6.

(e) The action of any officer, employee, or agent in determining the amount of and in making any [rental or benefit payment] *payment authorized to be made under section 8* [23] shall not be subject to review by any officer of the Government other than the Secretary of Agriculture or Secretary of the Treasury.

(f) The provisions of this title shall be applicable to the United States and its possessions, except the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam; except that, in the case of sugar beets and sugarcane, the President, if he finds it necessary in order to effectuate the declared policy of this Act, is authorized by proclamation to make the provisions of this title applicable to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam. *The President is authorized to attach by Executive order any or all of such possessions to any internal revenue collection district for the purpose of carrying out the provisions of this title with respect to the collection of taxes.*[24]

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(h) For the efficient administration of the provisions of part 2 of this title, the provisions, including penalties, of sections 8, 9, and 10 of the Federal Trade Commission Act, approved September 26, 1914, are made applicable to the jurisdic-

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[23] As amended by Sec. 17 of Public No. 320, 74th Cong., 1st Sess.

[24] As amended by Public No. 331, 74th Cong., 1st Sess., approved August 26, 1935.

tion, powers, and duties of the Secretary in administering the provisions of this title and to any person subject to the provisions of this title, whether or not a corporation. Hearings authorized or required under this title shall be conducted by the Secretary of Agriculture or such officer or employee of the Department as he may designate for the purpose. The Secretary may report any violation of any agreement entered into under part 2 of this title to the Attorney General of the United States, who shall cause appropriate proceedings to enforce such agreements to be commenced and prosecuted in the proper courts of the United States without delay.

(i) The Secretary of Agriculture upon the request of the duly constituted authorities of any State is directed, in order to effectuate the declared policy of this title and in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof, to confer with and hold joint hearings with the duly constituted authorities of any State, and is authorized to cooperate with such authorities; to accept and utilize, with the consent of the State, such State and local officers and employees as may be necessary; to avail himself of the records and facilities of such authorities; to issue orders (subject to the provisions of section 8c) complementary to orders or other regulations issued by such authorities; and to make available to such State authorities the records and facilities of the Department of Agriculture: Provided, That information furnished to the Secretary of Agricul-

ture pursuant to section 8d (1) hereof shall be made available only to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities, and then only upon a written agreement by such authorities that the information so furnished shall be kept confidential by them in a manner similar to that required of Federal officers and employees under the provisions of section 8d (2) hereof[25] (U. S. C., Title 7, Sec. 610).

COMMODITIES

SEC. 11.[26] As used in this title, the term "basic agricultural commodity" means wheat, rye, flax, barley, cotton, field corn, grain sorghums, hogs, cattle, rice, *potatoes,* tobacco, sugar beets and sugarcane, peanuts, and milk and its products, and any regional or market classification, type, or grade thereof; but the Secretary of Agriculture shall exclude from the operation of the provisions of this title, during any period, any such commodity or classification, type, or grade thereof if he finds, upon investigation at any time and after due notice and opportunity for hearing to interested parties, that the conditions of production, marketing, and consumption are such that during such period this title cannot be effectively administered to the end of effectuating the declared policy with respect to such commodity or classification, type, or grade thereof. *As used in this title, the term "potatoes" means all varieties of potatoes included*

[25] Added by Sec. 18 of Public No. 320, 74th Cong., 1st Sess.

[26] As amended by the Act of April 7, 1934, c. 103, 48 Stat. 528, Secs. 1, 3, 4, 5; and by the Act of May 9, 1934, c. 263, 48 Stat. 670, Sec. 1.

in the species Solanum tuberosum [27] (U. S. C., Title 7, Sec. 611).

APPROPRIATION

SEC. 12. (a) There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $100,000,000 to be available to the Secretary of Agriculture for administrative expenses under this title and for [rental and benefit payments made with respect to reduction in acreage or reduction in production for market under part 2 of this title] *payments authorized to be made under section 8.*[28] Such sum shall remain available until expended.

To enable the Secretary of Agriculture to finance, under such terms and conditions as he may prescribe, surplus reductions and productions adjustments with respect to the dairy- and beef-cattle industries, and to carry out any of the purposes described in subsections (a) and (b) of this section (12) and to support and balance the markets for the dairy and beef cattle industries, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $200,000,000: *Provided,* That not more than 60 per centum of such amount shall be used for either of such industries.[29]

(b) [In addition to the foregoing, the proceeds derived from all taxes imposed under this title are

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[27] As amended by Sec. 61 of Public No. 320, 74th Cong., 1st Sess.

[28] As amended by Sec. 19 of Public No. 320, 74th Cong., 1st Sess.

[29] Added by Act of April 7, 1934, c. 103, 48 Stat. 528, Sec. 2.

hereby appropriated to be available to the Secretary of Agriculture for expansion of markets and removal of surplus agricultural products and the following purposes under part 2 of this title: Administrative expenses, rental and benefit payments, and refunds on taxes.] *In addition to the foregoing, for the purpose of effectuating the declared policy of this title, a sum equal to the proceeds derived from all taxes imposed under this title is hereby appropriated to be available to the Secretary of Agriculture for (1) the acquisition of any agricultural commodity pledged as security for any loan made by any Federal agency, which loan was conditioned upon the borrower agreeing or having agreed to cooperate with a program of production adjustment or marketing adjustment adopted under the authority of this title, and (2) the following purposes under part 2 of this title: Administrative expenses, payments authorized to be made under section 8, and refunds on taxes.*[30] The Secretary of Agriculture and the Secretary of the Treasury shall jointly estimate from time to time the amounts, in addition to any money available under subsection (a), currently required for such purposes; and the Secretary of the Treasury shall, out of any money in the Treasury not otherwise appropriated, advance to the Secretary of Agriculture the amounts so estimated. The amount of any such advance shall be deducted from such tax proceeds as shall subsequently become available under this subsection.

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[30] As amended by Sec. 3 of Public No. 320, 74th Cong., 1st Sess.

(c) The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books and books of reference, for contract stenographic reporting services, and for printing and paper in addition to allotments under the existing law. The Secretary of Agriculture shall transfer to the Treasury Department, and is authorized to transfer to other agencies, out of funds available for administrative expenses under this title, such sums as are required to pay administrative expenses incurred and refunds made by such department or agencies in the administration of this title (U. S. C., Title 7, Sec. 612).

TERMINATION OF ACT

SEC. 13. This title shall cease to be in effect whenever the President finds and proclaims that the national economic emergency in relation to agriculture has been ended; and pending such time the President shall by proclamation terminate with respect to any basic agricultural commodity such provisions of this title as he finds are not requisite to carrying out the declared policy with respect to such commodity. In the case of sugar beets and sugarcane, the taxes provided by this title shall cease to be in effect, and the powers vested in the President or in the Secretary of Agriculture shall terminate [at the end of three years after the adoption of this amendment] *on December 31, 1937,*[31] unless this title ceases to be in effect at an earlier

[31]As amended by Sec. 20 (a) of Public No. 320, 74th Cong., 1st Sess.

date, as hereinabove provided. The Secretary of Agriculture shall make such investigations and reports thereon to the President as may be necessary to aid him in executing this section [32] (U. S. C., Title 7, Sec. 613).

SEPARABILITY OF PROVISIONS

SEC. 14. If any provision of this title is declared unconstitutional, or the applicability thereof to any person, circumstance, or commodity is held invalid the validity of the remainder of this title and the applicability thereof to other persons, circumstances, or commodities shall not be affected thereby (U. S. C., Title 7, Sec. 614).

SUPPLEMENTARY REVENUE PROVISIONS

EXEMPTIONS AND COMPENSATING TAXES

SEC. 15. (a) If at any time the Secretary of Agriculture finds, upon investigation and after due notice and opportunity for hearing to interested parties, that any class of products of any commodity is of such low value, considering the quantity of the commodity used for their manufacture, that the imposition of the processing tax would prevent in whole or in large part the use of the commodity in the manufacture of such products and thereby substantially reduce consumption and increase the surplus of the commodity, then the Secretary of Agriculture shall so certify to the Secretary of the Treasury, specifying whether such result will in his judgment most effectively be prevented by a suspension

[32] As amended by the Act of May 9, 1934, c. 263, 48 Stat. 670, Sec. 15.

of the imposition of the processing tax or a refund of the tax paid, with respect to such amount of the commodity or any product thereof as is used in the manufacture of such products, and thereafter, as shall be specified in such certification, (1) the imposition of the processing tax shall be suspended with respect to such amount of the commodity as is used in the manufacture of such products, and thereafter, as shall be specified in such certification, (2) the imposition of the processing tax shall be suspended with respect to such amount of the commodity as is used in the manufacture of such products until such time as the Secretary of Agriculture, after further investigation and due notice and opportunity for hearing to interested parties, revokes his certification to the Secretary of the Treasury, or (3) the Secretary of the Treasury shall refund (in accordance with the provisions of, to such persons and in such manner as shall be specified in, such certification) the amount of any tax paid (prior to the date of any revocation by the Secretary of Agriculture of his certification to the Secretary of the Treasury, upon further investigation and after due notice and opportunity for hearing to interested parties) under this title with respect to such amount of the commodity or any product thereof as is used after the date of such certification in the manufacture of such products [33] [.], *or shall credit against any tax due and payable under this title the amount of tax which would be refundable. During the period in which any certificate under this section is effective, the*

[33] As amended by the Act of June 26, 1934, c. 759, 48 Stat. 1241, Sec. 1.

provisions of subsection (e) of this section shall be suspended with respect to all imported articles of the kind described in such certificate; and notwithstanding the provisions of section 21, any compensating taxes, which have heretofore, during the period in which any certificate under this section has been effective, become due and payable upon imported articles of the kind described in such certificate, shall be refunded by the Secretary of the Treasury if the same have been paid, or, if the same have not been paid the amount thereof shall be abated. Notwithstanding the provisions of section 21, the Secretary of the Treasury shall refund or credit any processing tax paid on or before June 12, 1934, with respect to such amount of cotton as was used in the manufacture of large cotton bags (as defined in the Certificate of the Secretary of Agriculture, dated June 12, 1934) between June 13 and July 7, 1934, both inclusive.[34]

(b) No tax shall be required to be paid on the processing of any commodity by or for the producer thereof for consumption by his own family, employees, or household; and the Secretary of Agriculture is authorized, by regulations, to exempt from the payment of the processing tax the processing of commodities by or for the producer thereof for sale by him where, in the judgment of the Secretary, the imposition of a processing tax with respect thereto is unnecessary to effectuate the declared policy.

(b–1) The Secretary of Agriculture is authorized and directed to issue tax-payment warrants,

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[34]As amended by Sec. 21 of Public No. 320, 74th Cong., 1st Sess.

with respect to rough rice produced in 1933 and 1934 (provided the processing of such rice is not exempt from the tax, and provided no tax-payment warrant has been previously issued with respect thereto or previously applied for by application then pending, sufficient to cover the tax with respect to the processing thereof at the rate in effect at the time of such issuance, to any processor with respect to any such rice which he has in his possession on March 31, 1935, and to, or at the direction of any other person with respect to any such rice which, on or after April 1, 1935, he delivers for processing or sells to a processor: Provided, That in case any such processor or other person is the producer of such rice (or has received such rice by gift, bequest, or descent from the producer thereof) that such processor or other person is, if eligible, a cooperating producer: And provided further, That in case such processor or other person is not the producer thereof (nor a person who has received such rice by gift, bequest, or descent from the producer thereof), (a) that, if the title to such rice was transferred from the producer thereof, whether by operation of law or otherwise, prior to April 1, 1935, such producer received the price prescribed in any marketing agreement, license, regulation, or administrative ruling, pursuant to this title, applicable to the sale of such rice by the producer, and (b) that, if the title to such rice was transferred from the producer thereof, whether by operation of law or otherwise, on or after April 1, 1935, such producer received at least the full market price therefor plus an amount equal to 99 per centum of the face value of tax-payment warrants sufficient to cover the tax on the processing of such rice at rate in effect at the time title was so

transferred, and was, if eligible, a cooperating producer.

(b–2) The warrants authorized and directed to be issued by subsection (b–1) of this section—

(1) shall be issued by the Secretary of Agriculture or his duly authorized agent in such manner, at such time or times, at such place or places, in such form, and subject to such terms and conditions with reference to the transfer thereof or the voiding of warrants fraudulently obtained and/or erroneously issued, as the Secretary of Agriculture may prescribe, and the Secretary of Agriculture is authorized to discontinue the further issuance of tax-payment warrants at any time or times and in any region or regions when he shall determine that the rice in any such region or regions can no longer be identified adequately as rice grown in 1933 or 1934; and

(2) shall be accepted by the Collector of Internal Revenue and the Secretary of the Treasury at the face value thereof in payment of any processing tax on rice.

(b–3) (1) Any person who deals or traffics in, or purchases any such tax-payment warrant or the right of any person thereto at less than 99 per centum of its face value shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year or both.

(2) Any person who, with intent to defraud, secures or attempts to secure, or aids or assists in or procures, counsels, or advises, the securing or attempting to secure any tax-payment warrant with respect to rice as to which any tax-payment warrant has been theretofore issued shall be guilty

of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(3) Any person who with intent to defraud forges, makes, alters, or counterfeits any tax-payment warrant or any stamp, tag, or other means of identification provided for by this title or any regulation issued pursuant thereto, or makes any false entry upon such warrant or any false statement in any application for the issuance of such warrant, or who uses, sells, lends, or has in his possession any such altered, forged, or counterfeited warrant or stamp, tag, or other means of identification, or who makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such warrants or stamps, tags, or other means of identification, shall, upon conviction thereof, be punished by a fine not exceeding $5,000 or by imprisonment not exceeding five years, or both.

(4) All producers, warehousemen, processors, and common carriers, having information with respect to rice produced in the years 1933 or 1934, may be required to furnish to the Secretary of Agriculture such information as he shall, by order, prescribe as necessary to safeguard the issuance, transfer, and/or use of tax-payment warrants.

(5) The Secretary of Agriculture may make regulations protecting the interests of producers (including share-tenants and share-croppers) and others, in the issuance, holding, use, and/or transfer of such tax-payment warrants.[35]

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[35]Added by Sec. 8 of Public No. 20, 74th Cong., 1st Sess.

(c) Any person, including any State or Federal organization or institution, delivering any product to any organization for charitable distribution, or use, including any State or Federal welfare organization, for its own use, whether the product is delivered as merchandise, or as a container for merchandise, or otherwise, shall, if such product or the commodity from which processed is under this title subject to tax, be entitled to a refund of the amount of any tax due and paid under this title with respect to such product so delivered, or to a credit against any tax due and payable under this title of the amount of tax which would be refundable under this section with respect to such product so delivered: *Provided, however,* That no tax shall be refunded or credited under this section, unless the person claiming the refund or credit establishes, in accordance with regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury (1) that he has not included the tax in the price of the product so delivered or collected the amount of the tax from the said organization, or (2) that he has repaid, or has agreed in writing to repay, the amount of the tax to the said organization. [No refund shall be allowed under this section unless claim therefor is filed within six months after delivery of the products to the organization for charitable distribution, or use.] [36] The word "State" as used in this section shall include a State and any political subdivision thereof.[37]

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[36] As amended by Sec. 22 of Public No. 320, 74th Cong., 1st Sess.

[37] As amended by the Act of June 16, 1934, c. 551, 48 Stat. 973.

(d) The Secretary of Agriculture shall ascertain from time to time whether the payment of the processing tax upon any basic agricultural commodity is causing or will cause to the processors *or producers*[38] thereof disadvantages in competition from competing commodities by reason of excessive shifts in consumption between such commodities or products thereof. If the Secretary of Agriculture finds, after investigation and due notice and opportunity for hearing to interested parties, that such disadvantages in competition exist, or will exist, he shall proclaim such finding. The Secretary shall specify in this proclamation the competing commodity and the compensating rate of tax on the processing thereof necessary to prevent such disadvantages in competition. Thereafter there shall be levied, assessed, and collected upon the first domestic processing of such competing commodity a tax, to be paid by the processor, at the rate specified, until such rate is altered pursuant to a further finding under this section, or the tax or rate thereof on the basic agricultural commodity is altered or terminated. In no case shall the tax imposed upon such competing commodity exceed that imposed per equivalent unit, as determined by the Secretary, upon the basic agricultural commodity.

(e) During any period for which a processing tax is in effect with respect to any commodity there shall be levied, assessed, collected, and paid upon any article processed or manufactured wholly or partly from such commodity and imported into the United States or any possession thereof to which

[37] As amended by Sec. 23 of Public No. 320, 74th Cong., 1st Sess.

this title applies, from any foreign country or from any possession of the United States to which this title does not apply, whether imported as merchandise, or as a container of merchandise, or otherwise, a compensating tax equal to the amount of the processing tax in effect with respect to domestic processing of such commodity *into such an article* at the time of importation: *Provided, (1) That in the event any of the provisions of this title have been or are hereafter made applicable to any possession of the United States in the case of any particular commodity or commodities, but not generally, this title, for the purposes of this subsection, shall be deemed applicable to such possession with respect to such commodity or commodities but shall not be deemed applicable to such possession with respect to other commodities;* [39] *and* (2) That all taxes collected under this subsection upon articles coming from the possessions of the United States to which this title does not apply shall not be covered into the general fund of the Treasury of the United States but shall be held as a separate fund and paid into the Treasury of the said possessions, respectively, to be used and expended by the governments thereof for the benefit of agriculture. Such tax shall be paid prior to the release of the article from customs custody or control [40] (U. S. C., Title 7, Sec. 615).

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[39] As amended by Ses. 9 of Public No. 20, 74th Cong., 1st Sess.; and by Sec. 24 of Public No. 320, 74th Cong., 1st Sess.

[40] As amended by the Act of May 9, 1934, c. 263, 48 Stat. 670, Sec. 11.

EXPORTATIONS

SEC. 17. (a) [Upon the exportatin to any foreign country (and/or to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam) of any product with respect to which a tax has been paid under this title, or of any product processed wholly or partly from a commodity with respect to which product or commodity a tax has been paid under this title, the tax due and paid shall be refunded. The refund shall be paid to the exporter or to the consignor named in the bill of lading under which the product is exported, as determined under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.] *Upon the exportation to any foreign country (and/or to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam) of any product processed wholly or partly from a commodity with respect to which product or commodity a tax has been paid or is payable under this title, the tax due and payable or due and paid shall be credited or refunded. Under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, the credit or refund shall be allowed to the consignor named in the bill of lading under which the product is exported or to the shipper or to the person liable for the tax provided the consignor waives any claim thereto in favor of such shipper or person liable for the tax. In the case of rice, a tax due under this title which has been paid by a tax-payment warrant shall be deemed for the purposes of this subsection to have*

been paid; and with respect to any refund authorized under this section, the amount scheduled by the Commissioner of Internal Revenue for refunding shall be paid, any provision of law notwithstanding.[41] In the case of sugar beets and sugarcane, this subsection shall be applicable to exports of products thereof to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam only if this title with respect to sugar beets and sugarcane is not made applicable thereto. The term "product" includes any product exported as merchandise, or as a container for merchandise, or otherwise.

(b) Upon the giving of bond satisfactory to the Secretary of the Treasury for the faithful observance of the provisions of this title requiring the payment of taxes, any person shall be entitled, without payment of the tax, to process for such exportation any commodity with respect to which a tax is imposed by this title, or to hold for such exportation any article processed wholly or partly therefrom[42] (U. S. C., Title 7, Sec. 617).

EXISTING CONTRACTS

SEC. 18. (a) If (1) any processor, jobber, or wholesaler has, prior to the date a tax with respect to any commodity is first imposed under this title, made a bona fide contract of sale for delivery on or after such date, of any article processed wholly or in chief value from such commodity, and if (2)

[41] As amended by Sec. 11 of Public No. 20, 74th Cong., 1st Sess.; and by Sec. 28 of Public No. 320, 74th Cong., 1st Sess.

[42] As amended by the Act of May 9, 1934, c. 263, 48 Stat. 670, Secs. 12, 13.

such contract does not permit the addition to the amount to be paid thereunder of the whole of such tax, then (unless the contract prohibits such addition) the vendee shall pay so much of the tax as is not permitted to be added to the contract price.

(b) Taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated and shall be collected and paid to the United States by the vendor in the same manner as other taxes under this title. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner of Internal Revenue who shall cause collections of such taxes to be made from the vendee (U. S. C., Title 7, Sec. 618).

COLLECTION OF TAXES

SEC. 19. (a) The taxes provided in this title shall be collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury. Such taxes shall be paid into the Treasury of the United States.

(b)[43] All provisions of law, including penalties, applicable with respect to the taxes imposed by section 600 of the Revenue Act of 1926, and the provisions of section 626 of the Revenue Act of 1932, shall, in so far as applicable and not inconsistent with the provisions of this title, be applicable in respect of taxes imposed by this title: *Provided,* That the Secretary of the Treasury is authorized to permit postponement, for a period not exceeding one hundred and eighty days, of the payment of *not*

[43] As amended by the Act of June 26, 1934, c. 759, 48 Stat. 1241, Sec. 3.

exceeding three-fourths of the amount of the taxes covered by any return under this title, *but postponement of all taxes covered by returns under this title for a period not exceeding one hundred and eighty days may be permitted in cases in which the Secretary of the Treasury authorizes such taxes to be paid each month on the amount of the commodity marketed during the next preceding month.*[44]

(c) In order that the payment of taxes under this title may not impose any immediate undue financial burden upon processors or distributors, any processor or distributor subject to such taxes shall be eligible for loans from the Reconstruction Finance Corporation under section 5 of the Reconstruction Finance Corporation Act.

(d) Under regulations made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, any person required pursuant to the provisions of this title to file a return may be required to file such return and pay the tax shown to be due thereon to the collector of internal revenue for the district in which the processing was done or the liability was incurred. Whenever the Commissioner of Internal Revenue deems it necessary, he may require any person or class of persons handling or dealing in any commodity or product thereof, with respect to which a tax is imposed under the provisions of this title, to make a return, render under oath such statements, or to keep such records, as the Commissioner deems sufficient to show whether or not such per-

[44] As amended by Sec. 29 (a) of Public No. 320, 74th Cong., 1st Sess.

son, or any other person, is liable for the tax.[45] (U. S. C., Title 7, Sec. 619.)

SEC. 20. (a) Whoever in connection with the purchase of, or offer to purchase, any commodity, subject to any tax under this title, or which is to be subjected to any tax under this title, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any amount deducted from the market price or the agreed price of the commodity consists of a tax imposed under this title, or (2) ascribing a particular part of the deduction from the market price or the agreed price of the commodity, to a tax imposed under this title, knowing that such statement is false or that the tax is not so great as the amount deducted from the market price or the agreed price of the commodity, ascribed to such tax, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000 or by imprisonment for not exceeding six months, or both.

(b) Whoever in connection with the processing of any commodity subject to any tax under this title, whether commercially, for toll, upon an exchange, or otherwise, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any part of the charge for said processing, whether commercially, for toll, upon an exchange, or otherwise, consists of a tax imposed under this title, or (2) ascribing a particular part of the charge for processing, whether commercially, for toll, upon an exchange, or otherwise, to

[45] Added by Sec. 29 (b) of Public No. 320, 74th Cong., 1st Sess.

a tax imposed under this title, knowing that such statement is false, or that the tax is not so great as the amount charged for said processing ascribed to such tax, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $1,000 or by imprisonment for not exceeding six months, or both.

(c) Whoever in connection with any settlement, under a contract to buy any commodity, and/or to sell such commodity, or any product or byproduct thereof, subject to any tax under this title, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any amount deducted from the gross sales price, in arriving at the basis of settlement under the contract, consists of a tax under this title, or (2) ascribing a particular amount deducted from the gross sales price, in arriving at the basis of settlement under the contract, to a tax imposed under this title, knowing that such statement is false, or that the tax is not so great as the amount so deducted and/or ascribed to such tax, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than $1,000 or by imprisonment for not exceeding six months, or both [46] (U. S. C., Title 7, Sec. 620).

Sec. 21. (a) No suit, action, or proceeding (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collec-

[46] Added by the Act of May 9, 1934, c. 263, 48 Stat. 670, Sec. 16.

tion of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (d) of this section, may be reserved in the court's order.

(b) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regulations of the Secretary with the approval of the President prior to the date of the adoption of this amendment, are hereby legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which have accrued and remain unpaid on the date of the adoption of this amendment shall be assessed and collected pursuant to section 19, and to the provisions of law made applicable thereby. Nothing in

this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary of Agriculture or of the President done or made prior to the date of the adoption of this amendment.

(c) The making of rental and benefit payments under this title, prior to the date of the adoption of this amendment, as determined, prescribed, proclaimed and made effective by the proclamations of the Secretary of Agriculture or of the President or by regulations of the Secretary, and the initiation, if formally approved by the Secretary of Agriculture prior to such date of adjustment programs under section 8 ("one") of this title, and the making of agreements with producers prior to such date, and the adoption of other voluntary methods prior to such date, by the Secretary of Agriculture under this title, and rental and benefit payments made pursuant thereto, are hereby legalized and ratified, and the making of all such agreements and payments, the initiation of such programs, and the adoption of all such methods prior to such date are hereby legalized, ratified, and confirmed as fully to all intents and purposes as if each such agreement, program, method, and payment had been specifically authorized and made effective and the rate and amount thereof fixed specifically by prior Act of Congress.

(d) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counterclaim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such

tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be refunded or

credited to any person (not a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (a) and (b) of section 16, had the tax terminated by proclamation pursuant to the provisions of section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish to the satisfaction of the Commissioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power

conferred on him under this title, shall be maintained in any court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held invalid a claim therefor (conforming to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2) no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, on jurisdiction of such courts based upon the amount in controversy.

(e) In connection with the establishment, by any claimant, of the facts required to be established in subsection (d) of this section, the Commissioner of Internal Revenue is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda, relative to any matter affecting the findings to be made by the Commissioner

pursuant to subsection (d) of this section, to require the attendance of the claimant or of any officer or employee of the claimant, or the attendance of any other person having knowledge in the premises, and to take, or cause to be taken, his testimony with reference to any such matter, with power to administer oaths to such person or persons. It shall be lawful for the Commissioner, or any collector designated by him, to summon witnesses on behalf of the United States or of any claimant to appear before the Commissioner, or before any person designated by him, at a time and place named in the summons, and to produce such books, papers, correspondence, memoranda, or other records as the Commissioner may deem relevant or material, and to give testimony or answer interrogatories, under oath, relating to any matter affecting the findings to be made by the Commissioner pursuant to subsection (d) of this section. The provisions of Revised Statutes 3174 and of Revised Statutes 3175 shall be applicable with respect to any summons issued pursuant to the provisions of this subsection. Any witness summoned under this subsection shall be paid, by the party on whose behalf such witness was summoned, the same fees and mileage as are paid witnesses in the courts of the United States. All information obtained by the Commissioner pursuant to this subsection shall be available to the Secretary of Agriculture upon written request therefor. Such information shall be kept confidential by all officers and employees of the Department of Agriculture, and any such officer or employee who violates this requirement shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more

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than one year, or both, and shall be removed from office.

(f) No refund, credit, or abatement shall be made or allowed of the amount of any tax, under section 15, or section 17, unless, within one year after the right to such refund, credit, or abatement has accrued, a claim for such refund, credit, or abatement (conforming to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled to such refund, credit, or abatement, except that if the right to any such refund, credit, or abatement accrued prior to the date of the adoption of this amendment, then such one-year period shall be computed from the date of this amendment. No interest shall be allowed or paid, or included in any judgment, with respect to any such claim for refund or credit.

(g) The provisions of section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax, or any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of section 317 of the Tariff Act of 1930.[47]

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[47] Added by Sec. 30 of Public No. 320, 74th Cong., 1st Sess.

Sec. 22. (a) Whenever the President has reason to believe that any one or more articles are being imported into the United States under such conditions and in sufficient quantities as to render or tend to render ineffective or materially interfere with any program or operation undertaken, or to reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which an adjustment program is in operation, under this title, he shall cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties and shall be conducted subject to such regulations as the President shall specify.

(b) If, on the basis of such investigation and report to him of findings and recommendations made in connection therewith, the President finds the existence of such facts, he shall by proclamation impose such limitations on the total quantities of any article or articles which may be imported as he finds and declares shown by such investigation to be necessary to prescribe in order that the entry of such article or articles will not render or tend to render ineffective or materially interfere with any program or operation undertaken, or will not reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which an adjustment program is in operation, under this title: Provided, That no limitation shall be imposed on

the total quantity of any article which may be imported from any country which reduces such permissible total quantity to less than 50 per centum of the average annual quantity of such article which was imported from such country during the period from July 1, 1928, to June 30, 1933, both dates inclusive.

(c) No import restriction proclaimed by the President under this section nor any revocation, suspension, or modification thereof shall become effective until fifteen days after the date of such proclamation, revocation, suspension, or modification.

(d) Any decision of the President as to facts under this section shall be final.

(e) After investigation, report, finding, and declaration in the manner provided in the case of a proclamation issued pursuant to subsection (b) of this section, any proclamation or provision of such proclamation may be suspended by the President whenever he finds that the circumstances requiring the proclamation or provision thereof no longer exist, or may be modified by the President whenever he finds that changed circumstances require such modification to carry out the purposes of this section.[48]

REVISED STATUTES

SEC. 3210. [As amended by Sec. 1031 (b) of the Revenue Act of 1924, c. 234, 43 Stat. 253.] (a) Except as provided in subdivision (b) the gross amount of all taxes and revenues received under the provisions of this Act, and collections of what-

[48] Added by Sec. 31 of Public No. 320, 74th Cong., 1st Sess.

ever nature received or collected by authority of any internal-revenue law, shall be paid daily into the Treasury of the United States under instructions of the Secretary of the Treasury as internal-revenue collections, by the officer receiving or collecting the same, without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any description. A certificate of such payment, stating the name of the depositor and the specific account on which the deposit was made, signed by the treasurer, assistant treasurer, designated depositary, or proper officer of a deposit bank, shall be transmitted to the Commissioner of Internal Revenue.

* * * * *

(U. S. C., Title 26, Sec. 1761.)

SEC. 3220. [As amended by Sec. 1111 of the Revenue Act of 1926, c. 27, 44 Stat. 9, and Sec. 619 of the Revenue Act of 1928, c. 852, 45 Stat. 791.] Except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal-revenue taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor,

assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section (U. S. C., Title 26, Sec. 1670).

SEC. 3224. No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court (U. S. C., Title 26, Sec. 1543).

SEC. 3226. [As amended by Sec. 1103 of the Revenue Act of 1932, c. 209, 47 Stat. 169.] No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to

which such suit or proceeding relates (U. S. C., Title 26, Secs. 1672–1673).

SEC. 3228. [As amended by Sec. 1112 of the Revenue Act of 1926, Sec. 619 of the Revenue Act of 1928, and Sec. 1106 of the Revenue Act of 1932.] (a) All claims for the refunding or crediting of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes, be presented to the Commissioner or Internal Revenue within four years next after the payment of such tax, penalty, or sum. The amount of the refund (in the case of taxes other than income, war-profits, excess-profits, estate, and gift taxes) shall not exceed the portion of the tax, penalty, or sum paid during the four years immediately preceding the filing of the claim, or if no claim was filed, then during the four years immediately preceding the allowance of the refund.

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(U. S. C., Title 26, Sec. 1433.)

REVENUE ACT OF 1926, c. 27, 44 STAT. 9

TITLE VI—EXCISE TAXES

SEC. 600. There shall be levied, assessed, collected, and paid upon the following articles sold or leased by the manufacturer, producer, or importer, a tax equivalent to the following percentage of the price for which so sold or leased—

* * * * *

SEC. 602. Every person liable for any tax imposed by section 600 shall make monthly returns under oath in duplicate and pay the taxes imposed by such section to the collector for the district in which is located the principal place of business. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum a month from the time when the tax became due until paid (U. S. C., Title 26, Secs. 1121, 1122).

TITLE XI—GENERAL ADMINISTRATIVE PROVISIONS

LAWS MADE APPLICABLE

SEC. 1100. All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act (U. S. C., Title 26, Sec. 440).

REVENUE ACT OF 1932, C. 209, 47 STAT. 169

SEC. 626. RETURN AND PAYMENT OF MANUFACTURERS' TAXES.

(a) Every person liable for any tax imposed by this title other than taxes on importation (except tax under section 615, relating to tax on soft drinks) shall make monthly returns under oath in duplicate and pay the taxes imposed by this title to the col-

lector for the district in which is located his principal place of business or, if he has no principal place of business in the United States, then to the collector at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

(b) The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum a month from the time when the tax became due until paid.

PART B

REGULATIONS 83 (SEPTEMBER, 1934, ED.), C. II

ART. 2. *Scope of chapter.*—The provisions of this chapter apply to the procedure to be followed in order to obtain a refund of the amount of tax which has been paid with respect to a product exported to a foreign country.

ART. 3. *Claim for refund.*—(a) The claim for refund shall be executed by the claimant on the prescribed form, P. T. Form 27, in accordance with the instructions contained thereon, and in accordance with these regulations. The claim must be filed with the collector for the district in which is located the principal place of business of the claimant. If the claimant has no principal place of business in the United States, the claim must be filed with the collector at Baltimore, Md. One claim may cover a number of export shipments. The party named as consignor in the bill of lading under which a product is exported shall be entitled to the refund unless the exporter shall have reserved the right to refund, and the bill of lading bears the proper disclaimer by the consignor.

(b) Each claim for refund shall show with respect to each export shipment (1) the serial number given by the collector of customs to the application for inspection (article 4), and the name of the port where filed (mail exportations excepted, see article 11), (2) the number and kind of packages, (3) the actual net weight of each product exported, together with such a description of the product as will enable the Commissioner to apply the proper rate of tax, (4) the quantity of the commodity in each product with respect to which claim

is made that tax was paid, (5) the rate of tax applicable thereto as determined by the conversion factor established in regulations of the Secretary of Agriculture, and (6) the amount of refund claimed thereon.

(c) In the case of a shipment other than by mail, a copy of the export bill of lading required with respect to such shipment shall be filed with each claim and shall be deemed a part thereof. In the case of exportation by mail, the executed application for inspection, as provided in article 11, must be filed with the claim and will be deemed a part thereof.

(d) Each claim shall be supported by proof satisfactory to the Commissioner that the tax, refund of which is claimed, was actually paid to a collector of internal revenue.

TREASURY DECISION 4586, INTERNAL REVENUE BULLETIN, VOL. XIV, No. 37, P. 15

XIV-37-7696. T. D. 4586

PROCESSING TAX AND COMPENSATING TAX WITH RESPECT TO RICE UNDER THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER
OF INTERNAL REVENUE,
Washington, D. C.

Collectors of Internal Revenue and Others Concerned:

PARAGRAPH A. Section 9 (a), Agricultural Adjustment Act, as amended by the Act approved March 18, 1935, provides, in part:

* * * When the Secretary of Agriculture determines that rental or benefit pay-

ments are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation; except that * * * in the case of rice, the Secretary of Agriculture shall, before April 1, 1935, proclaim that rental or benefit payments are to be made with respect thereto, and the processing tax shall be in effect on and after April 1, 1935. * * * In the case of rice, the period from August 1 to July 31, both inclusive, shall be considered to be the marketing year. * * *

PAR. B. A proclamation of the Acting Secretary of Agriculture, dated March 18, 1935, provides:

> * * * I, M. L. WILSON, Acting Secretary of Agriculture of the United States of America, have determined and hereby proclaim that rental and/or benefit payments are to be made with respect to rice, a basic agricultural commodity.

PAR. C. Section 9(b) of the Agricultural Adjustment Act, as amended, provides in part:

> (3) For the period from April 1, 1935, to July 31, 1936, both inclusive, the processing tax with respect to rice shall be levied, assessed, collected, and paid at the rate of 1 cent per pound of rough rice.
>
> (7) In the case of rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to a processor, except that, where the producer processes his own rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to the place of processing.

PAR. D. Section 9 (d) of the Agricultural Adjustment Act, as amended, provides in part:

> (7) In the case of rice—
>
> (A) The term "rough rice" means rice in that condition which is usual and customary when delivered by the producer to a processor.
>
> (B) The term "processing" means the cleaning, shelling, milling (including custom milling for toll as well as commercial milling), grinding, rolling, or other processing (except grinding or cracking by or for the producer thereof for feed for his own livestock, cleaning by or directly for a producer for seed purposes, and drying) of rough rice; and in the case of rough rice with respect to which a tax-payment warrant had been previously issued or applied for by application then pending, the term "processing" means any one of the above-mentioned processings or any preparation or handling in connection with the sale or other disposition thereof.
>
> (D) The term "processor", as used in subsection (b–1)[49] of section 15 of this title, means any person (including a cooperative association of producers) engaged in the processing of rice on a commercial basis (including custom milling for toll as well as commercial milling).

PAR. E. Section 10 (c), Agricultural Adjustment Act, provides:

> The Secretary of Agriculture is authorized, with the approval of the President, to make such regulations with the force and effect of law as may be necessary to carry out the powers vested in him by this title, including regulations establishing conversion factors for any commodity and article proc-

[49] See paragraph G.

essed therefrom to determine the amount of tax imposed or refunds to be made with respect thereto. Any violation of any regulation shall be subject to such penalty, not in excess of $100, as may be provided therein.

PAR. F. The regulations, with respect to rice, made by the Secretary of Agriculture, with the approval of the President, dated March 30, 1935, as revised and, in part, superseded by regulations made by the Acting Secretary of Agriculture, with the approval of the President, dated July 31, 1935, provide:

I. MARKETING YEAR

(1) I do hereby ascertain and prescribe that for the purposes of said Act the first marketing year for rice shall begin August 1, 1935.

II. RATE OF TAX

(2) The rate of processing tax on the first domestic processing of rice, beginning April 1, 1935, shall be one (1) cent per pound of rough rice.

The weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to a processor, except that where the producer processes his own rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to the place of processing.

III. DEFINITIONS

(3) The following terms, as used in these regulations, shall have the meanings hereby assigned to them:

First domestic processing means the cleaning, shelling, milling (including custom milling for toll as well as commercial milling), grinding, rolling, or other processing (except grinding or cracking by or for the producer thereof for feed for his own

livestock, cleaning by or directly for a producer for seed purposes, and drying) of rough rice; and in the case of rough rice with respect to which a tax-payment warrant has been previously issued or applied for by application then pending, the first domestic processing means any one of the above-mentioned processings or any preparation or handling in connection with the sale or other disposition thereof.

Rough rice (frequently termed or referred to as "paddy") means rice in that condition which is usual and customary when delivered by the producer to a processor.

Ground rough rice is rough rice which has been cracked, crushed, chopped, or ground.

Cleaned rough rice is rough rice which has been subjected to a cleaning process for removal of separable extraneous foreign matter.

Brown rice is rice which has been hulled and from which the germ and the bran have not been removed.

Rice meal is brown rice which has been cracked, crushed, chopped, pulverized, or ground.

Milled rice is rice which has been hulled and from which the germ and all or part of the bran have been removed, and may be either whole or broken, coated or uncoated.

(*a*) *Brewers' rice* is broken milled rice which will pass readily through a metal sieve perforated with round holes five and one-half sixty-fourths of one inch in diameter.

(*b*) *Other milled rice* is any milled rice other than brewers' rice.

Granulated rice is milled rice which has been cracked, crushed, chopped, pulverized, or ground.

Rice flour is flour resulting from the pulverizing and/or bolting of milled rice.

Rice starch is starch resulting from the wet milling of rice in any form.

Rice powder is rice starch which has been pulverized and/or bolted.

Rice breakfast foods are preparations of a breakfast food type in which rice is used as one of the ingredients, including (*a*) the rolled and flaked type, consisting chiefly of rice; and (*b*) the puffed type, consisting chiefly of rice.

Rice soup is soup which includes as one of its ingredients rice in any form.

Fermented beverages.—(*a*) *Beer* is an alcoholic beverage made by fermentation from cereals, including rice, and flavored with hops or other substance to impart its characteristic bitter flavor.

(*b*) *Rice wine or sake* is an alcoholic beverage made by a special process of fermentation from materials consisting chiefly of rice.

Distilled spirits are products derived from materials consisting chiefly of rice by a process of distillation, to which other ingredients may have been added, and include both beverages and medicinal preparations of the kinds commonly referred to as "Chinese wines."

Rice hull is the husk or tough fibrous outer coat of rough rice.

Rice bran is the bran of rice together with such quantity of hull fragments and germ as is usual in the regular milling of rice, and includes huller bran and stone bran.

Rice germ is the embryo of the rice kernel.

Rice polish is the fine powdery material resulting from the polishing of milled rice.

IV. CONVENTION FACTORS

(4) I do hereby establish conversion factors for articles processed wholly, in chief value, or partly from rice to determine the

amount of tax imposed or refunds to be made with respect thereto.

The following table of conversion factors fixes the percentage of the per-pound processing tax on rough rice with respect to each pound [50] of the following articles processed wholly, in chief value, or partly from rough rice:

Article	Unit (pounds)	Conversion factor (per cent of the per pound processing tax on rough rice)
Ground rough rice	1	100
Cleaned rough rice	1	101
Brown rice	1	130
Rice meal	1	130
Milled rice:		
(a) Brewers rice	1	75
(b) Other milled rice	1	145
Granulated rice	1	75
Rice flour	1	75
Rice starch	1	215
Rice powder	1	215
Rice breakfast foods:		
(a) Rolled or flaked types, consisting chiefly of rice	1	178
(b) Puffed type, consisting chiefly of rice	1	377
Rice soup	1	9
Fermented beverages:		
(a) Beer, if made from materials of which rice constituted by weight: [1]		
Over 1/10 percent and not over 10 percent	(2)	310
Over 10 percent and not over 15 percent	(2)	504
Over 15 percent and not over 20 percent	(2)	697
Over 20 percent and not over 25 percent	(2)	891
Over 25 percent and not over 30 percent	(2)	1,084
Over 30 percent and not over 35 percent	(2)	1,278
Over 35 percent and not over 40 percent	(2)	1,471
Over 40 percent and not over 45 percent	(2)	1,665
Over 45 percent	(2)	1,859
(b) Rice wine or sake	(3)	887
Distilled spirits	(3)	3,000
Rice hull	1	0
Rice bran	1	0
Rice germ	1	0
Rice polish	1	0

[1] Exclusive of water added during the manufacturing process.
[2] Per barrel of 31 gallons.
[3] Per gallon.

[50] In the case of rice wine or sake, and distilled spirits, 1 gallon; in the case of beer, 1 barrel of 31 gallons.

As to any article for which no conversion factor is assigned, I hereby establish (1) that if such article is made, directly or indirectly, in some part from another article for which a conversion factor is assigned, then as to each pound of the rice content of such part the conversion factor shall be the conversion factor for such other article, and (2) that if such article is made, directly or indirectly, in some part from rice but not as to such part from another article for which a conversion factor is assigned, then as to such part the tax or refund shall be computed at the rate of the processing tax upon the basis of the amount of rough rice established to have been actually used in the production of such part.

In the event that the Commissioner of Internal Revenue, any taxpayer, or any person entitled to a refund establishes that any article processed from rice, with respect to which a tax is imposed, or which may be the subject of a claim for refund, which is included in the above list, contains more or less rice content than represented by the listed conversion factor, then the amount of the tax or of the refund shall be computed at the rate of the processing tax upon the basis of the amount of rough rice established to have been actually used in the production of the article.

PAR. G. Section 15 (b–1) and (b–2), Agricultural Adjustment Act, as amended, provides:

(b–1) The Secretary of Agriculture is authorized and directed to issue tax-payment warrants, with respect to rough rice produced in 1933 and 1934 * * * sufficient to cover the tax with respect to the processing thereof at the rate in effect at the time

of such issuance, to any processor with respect to any such rice which he has in his possession on March 31, 1935, and to, or at the direction of any other person with respect to any such rice which, on or after April 1, 1935, he delivers for processing or sells to a processor: * * *

(b–2) The warrants authorized and directed to be issued by subsection (b–1) of this section—

(1) shall be issued by the Secretary of Agriculture or his duly authorized agent in such manner, at such time or times, at such place or places, in such form, and subject to such terms and conditions with reference to the transfer thereof or the voiding of warrants fraudulently obtained and/or erroneously issued, as the Secretary of Agriculture may prescribe, * * *

(2) shall be accepted by the collector of internal revenue and the Secretary of the Treasury at the face value thereof in payment of any processing tax on rice.

PAR. H. Section 17 (a) of the Agricultural Adjustment Act, as amended, provides in part:

Upon the exportation to any foreign country (and/or to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam) of any product with respect to which a tax has been paid under this title, or of any product processed wholly or partly from a commodity with respect to which product or commodity a tax has been paid under this title, the tax due and paid shall be refunded. The refund shall be paid to the exporter or to the consignor named in the bill of lading under which the product is exported, as determined under regulations prescribed by the

Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. In the case of rice, a tax due under this title which has been paid by a tax-payment warrant shall be deemed for the purposes of this subsection to have been paid; and with respect to any refund authorized under this section, the amount scheduled by the Commissioner of Internal Revenue for refunding shall be paid, any provision of law notwithstanding. * * *

PAR. I. Section 15 (e) of the Agricultural Adjustment Act, as amended, provides in part:

During any period for which a processing tax is in effect with respect to any commodity there shall be levied, assessed, collected, and paid upon any article processed or manufactured wholly or partly from such commodity and imported into the United States or any possession thereof to which this title applies, from any foreign country or from any possession of the United States to which this title does not apply, whether imported as merchandise, or as a container of merchandise, or otherwise, a compensating tax equal to the amount of the processing tax in effect with respect to domestic processing of such commodity into such an article at the time of importation: *Provided,* (1) That in the event any of the provisions of this title have been or are hereafter made applicable to any possession of the United States in the case of any particular commodity or commodities, but not generally, this title, for the purposes of this subsection, shall be deemed applicable to such possession with respect to such commodity or commodities but shall not be deemed applicable to such possession with respect to other commodities; * * *

PAR. J. Section 19 (a), Agricultural Adjustment Act, provides:

> The taxes provided in this title shall be collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury. Such taxes shall be paid into the Treasury of the United States.

PAR. K. Section 10 (d), Agricultural Adjustment Act, provides:

> The Secretary of the Treasury is authorized to make such regulations as may be necessary to carry out the powers vested in him by this title.

PAR. L. Section 1101, Revenue Act of 1926, made applicable by section 19 (b), Agricultural Adjustment Act, provides:

> The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this Act.

Pursuant to the above-quoted provisions and provisions of the various internal-revenue laws, the following regulations are hereby prescribed:

> ARTICLE 1. *General.*—(*a*) At the earliest moment of April 1, 1935, there became effective (1) a processing tax on the first domestic processing of rice and (2) a compensating tax with respect to all articles processed or manufactured wholly or partly from rough rice and imported on or after April 1, 1935.
>
> The rate of processing tax is given in article 2 of these regulations. The rates of compensating tax are given in article 4 of these regulations.
>
> (*b*) For regulations relating to the processing tax and compensating tax, consult

Regulations 81, and for regulations relating to exportation under section 17 of the Act, consult Regulations 83 (September, 1934, edition), which are general regulations under the Agricultural Adjustment Act, as amended. Said regulations are supplemented by the regulations contained in this Treasury decision.

(*c*) The "effective date" as defined and used in Regulations 81 and Regulations 83 (September, 1934, edition), that is, the date when the processing tax with respect to rice became effective, is April 1 ,1935.

(*d*) The various definitions set forth in the regulations of the Secretary of Agriculture in paragraph F (3) above are hereby made a part of these regulations.

ART. 2. *Processing tax.*—(*a*) A tax is imposed on the first domestic processing of rice. First domestic processing of rice means:

(1) The cleaning, shelling, milling (including custom milling for toll as well as commercial milling), grinding, rolling, or other processing (except grinding or cracking by or for the producer thereof for feed for his own livestock, cleaning by or directly for a producer for seed purposes, and drying) of rough rice;

(2) In the case of rough rice with respect to which a tax-payment warrant has been previously issued or applied for by application then pending, (*a*) any one of the above-mentioned processings or (*b*) any preparation or handling in connection with the sale or other disposition thereof. See subdivision (*c*) of this article.

The term "rough rice" means rice in that condition which is usual and customary

when delivered by the producer to a processor. The rate of tax on the first domestic processing of rice is one (1) cent per pound of rough rice. The weight of rice to which the rate of tax shall be applied shall be the weight of rough rice when delivered to a processor, except that where the producer processes his own rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to the place of processing.

(*b*) *Tax-payment warrants.*—Tax-payment warrants issued pursuant to section 15 (b–1) and (b–2)[51] of the Act, as amended, will be accepted at the face value thereof by collectors of internal revenue in payment of any processing tax with respect to rice. If the amount of tax-payment warrants tendered with a processing tax return exceeds the amount of tax shown to be due on said return, the amount in excess shall be claimed on the return filed for the following month as a credit against the tax shown thereon to be due. If the amount of tax-payment warrants tendered with a processing tax return is less than the amount of tax shown to be due on such return, the difference shall be paid in cash.

(*c*) *Exemptions.*—

Exempt from the processing tax are:

(1) The processing of rough rice by or for the producer thereof for consumption by his family, employees, or household.

(2) The grinding or cracking of rough rice by or for the producer thereof for feed for his own livestock.

(3) The cleaning of rough rice by or directly for a producer for seed purposes.

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[51] See paragraph G above.

The exemption under subdivision (3) does not apply if (*a*) a tax-payment warrant has been issued, or (*b*) a tax-payment warrant has been applied for by application then pending, with respect to such rough rice, and such rice is prepared or handled in connection with a sale or other disposition thereof.

When rough rice is (1) processed for the producer thereof, for consumption by his family, employees, or household, or (2) ground or cracked for the producer thereof, for feed for his own livestock, or (3) cleaned directly for the producer for seed purposes, if the above exemption with respect thereto applies, the processor shall procure at the time of delivery of the product an affidavit or certificate in duplicate on P. T. Form 29–A. One copy of such affidavit or certificate shall be kept on the premises of the processing plant, and the other shall be filed by the processor with his monthly return on P. T. Form 5, on which deductions are taken for such processing, grinding, cracking, or cleaning.

(*d*) The form prescribed for return of processing tax is P. T. Form 5. The return for each month shall be filed on or before the last day of the month following the calendar month in which the processing is done. The amount of tax shown to be due on each such return must be paid at the time when the return is filed, or if the time for payment be postponed, then at the time or times designated for payment in such postponement.

(*e*) Each person engaged in the processing of rice shall keep a written record showing with respect to rough rice (1) the quan-

tity on hand at the beginning of the month, (2) the quantity received during the month, (3) the quantity shipped or delivered during the month, (4) the quantity sold or otherwise disposed of during the month, (5) the quantity on hand at the end of the month, and (6) the quantity put in process during the month. These quantities must be the actual weight of the rough rice when delivered to the processor, or when delivered to the place of processing if the processor is also the producer.

ART. 3. *Compensating tax on imported articles.*—A compensating tax became effective at the earliest moment of April 1, 1935, with respect to all articles processed or manufactured wholly or partly from rice imported on and after said date, into the United States or any possession thereof to which the Act applies, from any foreign country or any possession of the United States to which the Act does not apply. The amount of compensating tax payable with respect to an imported article is based on the rate in effect with respect to such article at the time of importation and not the rate in effect at the time of the withdrawal of such article from customs custody or control. The tax applicable to such articles is given in article 4 of these regulations. Detailed regulations as to this tax are contained in Chapter IV of Regulations 81, as amended by Treasury Decision 4501, approved December 4, 1934 [C. B. XIII–2, 524].

ART. 4. *Rates of compensating tax or of refund.*—(*a*) The rates of compensating tax or of refund with respect to articles processed wholly or partly from rice are as follows:

(1) In the case of an article named below, the rate is:

Classification	Rate of tax or of refund (cents)
	Per pound
Ground rough rice	1.00
Cleaned rough rice	1.01
Brown rice	1.30
Rice meal	1.30
Milled rice:	
(*a*) Brewers' rice	.75
(*b*) Other milled rice	1.45
Granulated rice	.75
Rice flour	.75
Rice starch	2.15
Rice powder	2.15
Rice breakfast foods:	
(*a*) Rolled or flaked types, consisting chiefly of rice	1.78
(*b*) Puffed type, consisting chiefly of rice	3.77
Rice soup	.09
Fermented beverages:	
(*a*) Beer, if made from materials of which rice constituted, by weight: [1]	*Per barrel of 31 gallons*
Over 1/10 percent and not over 10 percent	3.10
Over 10 percent and not over 15 percent	5.04
Over 15 percent and not over 20 percent	6.97
Over 20 percent and not over 25 percent	8.91
Over 25 percent and not over 30 percent	10.84
Over 30 percent and not over 35 percent	12.78
Over 35 percent and not over 40 percent	14.71
Over 40 percent and not over 45 percent	16.65
Over 45 percent	18.59
	Per gallon
(*b*) Rice wine or sake	8.87
Distilled spirits	30.00

[1] Exclusive of water added during the manufacturing process.

(2) In the case of an article not named in (1) above, part of which was made directly or indirectly from an article named in (1) above, the rate of tax or of refund with respect to such part shall be the rate for the named article from which such part was made; and, if such part was made indirectly from an article named in (1) above, and directly from another article named in (1) above, the rate of tax or of refund shall be the rate for the named article from which such part was directly made. For example,

if such part was made from milled rice, the rate of tax or of refund with respect to such part is the rate for milled rice.

(3) In the case of an article not named in (1) above, part of which was made directly or indirectly from rice, but not as to such part directly or indirectly from an article named in (1) above, the amount of tax or of refund shall be equivalent to the amount of tax on the processing of such quantity of rough rice as was actually used in the production of such part.

(*b*) In the event that the Commissioner of Internal Revenue finds, or any taxpayer, or any person entitled to a refund, establishes, that an article processed from rice, with respect to which a tax is imposed, or which may be the subject of a claim for refund, which is included in the above list, contains more or less rice content than represented by the conversion factor prescribed therefor in paragraph F (4), above, then the amount of tax or of refund shall be equivalent to the amount of tax on the processing of such quantity of rough rice as is shown to have been actually used in the production of the article.

(*c*) Any refund or credit of tax, made pursuant to the provisions of section 15 (c) or any refund made under the provisions of section 17 (a) of the Act, as amended, shall be made only on the following basis:

(1) If the tax paid was a compensating tax, the amount of refund shall be the amount of tax actually due and paid with respect to the particular product delivered or exported.

(2) If the tax paid was a processing tax, the amount of refund shall be determined in accordance with the rate of processing tax in effect at the time of the first domestic

processing of rice from which the delivered or exported product was processed and in accordance with the proper conversion factor in effect at the time the product was delivered or exported.

No refund under the provisions of section 17 (a) of the Act, as amended, will be made with respect to articles processed from rice which are exported unless it is shown that the tax with respect to such articles was actually paid in cash or by the tender of tax-payment warrants. No refund under the provisions of section 15 (c) of the Act, as amended, will be made with respect to articles processed from rice delivered for charitable distribution or use unless it is shown that the tax with respect to such articles was actually paid in cash.

Claims for such refunds shall be supported by the affidavit of the processor showing when the processing occurred which resulted in the particular rice product exported or delivered, and when the tax was paid to the collector. If the claim is made under the provisions of section 15 (c) of the Act, as amended, such affidavit must show that the tax was paid in cash. The affidavit of the processor must also show the quantity and kind of product sold, the name and address of the person to whom delivered, and date of delivery. The claim shall also be supported by the affidavit of each person to whom such rice product is subsequently delivered, showing the quantity and kind of product received, the name and address of the person from whom received, and date of receipt, and to whom all or part thereof was delivered, the quantity and kind delivered, the name and address of the person to whom delivered, and the date of delivery. These affidavits must trace such product from the processor to the person who files the claim.

ART. 5. *Forms.*—To insure the proper return and collection of the processing tax imposed by the Act, and to facilitate the refund of taxes, certain forms are herein prescribed. The prescribed form must be used as required by the applicable provision of Regulations 81, Regulations 83 (September, 1934, edition), and these regulations, and must be carefully filled out in exact accordance with the applicable provisions of the proper regulations and the instructions contained on such form. The following forms with respect to rice are here prescribed:

Form No.	Designation	Required by—
P. T. Form 5	Processing tax return	Regulations 81, article 11.
P. T. Form 24	Claim for refund of overpayment or abatement under Agricultural Adjustment Act.	Regulations 81, articles 30, 31 (*a*), 32.
P. T. Form 24–C	Claim for refund of, or credit for, tax paid, or payable, with respect to articles delivered for charitable distribution or use.	Regulations 81, article 32, as amended (T. D. 4454).
P. T. Form 27	Claim for refund of tax paid with respect to articles exported.	Regulations 83 (September 1934 edition).
P. T. Form 28	Claim for credit on monthly return.	Regulations 81, article 31 (*b*).

ART. 6. *Effective date.*—Treasury Decision 4565, approved July 10, 1935 [I. R. B. XIV–29, 18], shall remain in force and effect insofar as it relates to liability for tax incurred and right to refund or credit accrued prior to August 1, 1935. These regulations shall be in force and effect as of the earliest moment of August 1, 1935.

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved September 9, 1935.

T. J. COOLIDGE,
Acting Secretary of the Treasury.

PART C

Compilation taken from Monthly Reports from Commissioner of Internal Revenue to Agricultural Adjustment Administration published by Agricultural Adjustment Administration:

Month 1935	Collections of rice processing taxes	Rice processing tax export refunds
April	None	None
May	$0.30	None
June	1,582.25	None
July	754.83	$214,079.76
August	7,003.87	356,129.10
September	63,655.16	194,218.11
October	305,794.19	368,016.28
Total	378,790.60	1,132,443.25

PART D

Marketing Agreement for Southern Rice Milling Industry

The parties to this agreement are the contracting rice Millers and their subsidiaries, and the Secretary of Agriculture of the United States.

WHEREAS, The Congress of the United States by the Agricultural Adjustment Act approved May 12, 1933, as amended, has declared that a national economic emergency exists due to the severe and increasing disparity between the prices of agricultural and other commodities and that there should be established and maintained such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will establish prices to the farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period described in said Act, and

WHEREAS, pursuant to said Act, the parties hereto, for the purpose of effectuating the declared policy of said Act, desire to enter into a Marketing Agreement under the provisions of Section 8 (2) of the Act, and

WHEREAS, the rice milled and marketed by the Millers enters into the current of interstate and foreign commerce:

NOW, THEREFORE, in consideration of the premises and the mutual premises herein contained, the parties hereto agree as follows:

ARTICLE I—DEFINITIONS

As used in this Agreement, the following words and phrases shall be defined as follows:

1. "Miller" means any person, firm, corporation or cooperative association, signatory hereto, engaged in the milling and marketing of rice in any of the states of Louisiana, Arkansas, Texas and Tennessee and the subsidiary agencies and/or corporations engaged in the milling or marketing of rice, owned or controlled by any Miller.

2. "The Secretary" means the Secretary of Agriculture of the United States of America.

3. "The Act" means the Agricultural Adjustment Act approved May 12, 1933, as amended.

4. "Rough Rice" means rice from which the hull has not been removed.

5. "Clean Rice" means rice which has been converted into marketable and edible form.

6. "Control Committee" means the Control Committee created pursuant to Article II hereof.

7. "The Marketing Fund" means the Marketing Fund created by the Millers pursuant to Article VII hereof.

8. "Barrel" means a unit of 162 pounds of rough rice.

9. "Packaged Rice" means rice packed in any type of container having a net weight of 5 pounds or less.

10. "Sack" or "Bag" means every container of unknown, irregular, or random weight.

11. "Lump Sum" means without respect to quantity, quality or condition.

12. "Round" means purchasing without respect to grade.

13. "Crop Year" means the period from August 1 to July 31.

14. "A Bushel" means a unit of 45 pounds.

ARTICLE II—CONTROL COMMITTEE

1. The Millers shall elect a Control Committee of seven members, which shall be approved by the Secretary. Three members shall be selected from Louisiana, two from Arkansas, and two from Texas. Each member of the Control Committee shall be chosen by a weighted majority vote of all the Millers, and for such purpose each Miller's vote shall be entitled to the weight which the volume of rough rice milled by him during the three preceding crop years bears to the total volume of rough rice milled by all of the Millers in said years.

2. The Control Committee shall, at its organization meeting and from time to time thereafter elect such officers and adopt such rules for the conduct of its business as it may deem advisable. Vacancies in the Control Committee shall be filled in the same manner and shall be subject to the same approval by the Secretary as the original members.

3. The duties of the Control Committee shall be:

a. To supervise the performance of this agreement and to act as intermediary between the Secretary and the Millers.

b. To appoint such employees as it may deem necessary and to determine the salaries and to define the duties of any such employees.

c. To administer the Marketing Fund and to incur and pay such expense as it shall deem reasonable and necessary for the proper accomplishment of the purposes of this Agreement.

d. By appropriate resolution, from time to time, to appoint and define the duties of additional committees to assure any duties or perform such functions as may be necessary or desirable in the interests of the Millers and producers of rice.

e. To hear and dispose of all disputes arising in connection with the performance of this agreement, subject only to the right of appeal to the Secretary hereinafter granted in Article VIII. *Provided, however,* that said Control Committee shall not award in any dispute between Millers damages in money or impose upon a Miller any penalty requiring the payment of a sum of money, except in the event of a breach of this agreement, as hereinafter provided, and, *Further, Provided,* that if a member of the Control Committee shall in any case be a disputant, or a representative of a disputant, he shall, for the purpose of the consideration of such controversy, be disqualified as a member of the Control Committee.

ARTICLE III—REPORTS

1. Each Miller shall file with the Control Committee such reports at such times and in such form as the Control Committee may from time to time prescribe, and shall substantiate such reports in such manner as the Control Board may prescribe.

2. The details of any reports shall be confidential and the Control Committee shall not disclose to any person other than the Secretary information covering the business of any individual Miller. It shall

be the duty of the Control Committee to furnish the Secretary upon request any and all information furnished by the Millers pursuant to this Article.

ARTICLE IV—PURCHASES

1. All rough rice shall be purchased in units of barrels or bushels and no Miller shall purchase rice round or by sack, stack, or lump sum.

2. As soon as convenient after the effective date hereof the Secretary shall fix minimum prices for number one grade prime milling quality of each variety of rough rice. The Secretary may from time to time change any such minimum prices upon such advance notice to the Control Committee as the Secretary may deem reasonable under the circumstances. A majority of the Control Committee may propose changes in such minimum prices and submit such proposals to the Secretary.

From the minimum prices for rough rice thus determined the Millers shall compute minimum prices for each other grade of each variety of rough rice in accordance with the schedule of differentials hereto attached as Schedule 1. Said Schedule may at any time be changed by the Secretary if in his opinion it does not accurately reflect the relative market values of other grades.

3. After the effective date hereof the net price paid by any Miller to a producer for any rough rice shall not be less than the prevailing minimum price for the corresponding variety and grade determined pursuant to this Article and Schedule 1. Such price shall be based on delivery at customary points of delivery as defined by the Control Committee. Customary points of delivery as thus defined shall be subject to change at any time by the Secretary.

4. In the event of a controversy between a Miller and a producer with regard to the proper variety or grade of any rough rice such Miller shall cause a sample of said rice to be taken by a sampler licensed by the Federal-State Grading Office and shall submit such sample for grading to any Federal-State Grading Office. Said Miller shall abide by the certificate of grade and variety issued by such Federal-State Grading Office, the expense of such sampling and grading shall be borne by the loser to the controversy.

ARTICLE V—SALES

1. No Miller shall sell or offer for sale for domestic consumption clean rice milled from a barrel of rough rice for less than the actual cost or replacement cost of such barrel of rough rice delivered at the mill, plus the cost of conversion, the actual cost of the container and the Marketing Fund charge hereinafter provided for in Article VII.

a. The "replacement cost" of rough rice as used herein shall be the average per barrel price paid for rough rice of the same grade and variety by all mills within such geographical limits as shall be defined by the Control Committee on or about the date the clean rice is sold or offered for sale, as the case may be.

b. "Cost of conversion" as used herein shall be 70 cents per barrel of rough rice until said cost of conversion is changed by the Control Committee, with the approval of the Secretary. The cost of conversion shall not include the cost of containers or the marketing fund charge hereinafter provided for in Article VII.

2. No Miller shall sell rice except on the following terms:

a. All clean rice, other than packaged rice, for domestic delivery by rail or water, as follows: sight draft, order notify Bill of Lading attached, payable on arrival, with one (1) per cent discount allowed from F. O. B. mill price for payment within ten (10) days from date of shipment, regardless of whether the goods have arrived or not, and only net amount of invoice and draft to be accepted thereafter, provided, however, that on all sales of rice stored in warehouses located outside the states of Louisiana, Texas, Arkansas, and Tennessee, the terms of sale shall be cash less 1 percent discount for payment in 10 days after delivery to the purchaser.

b. All truck delivery, as follows: on shipments within the state and interstate within a radius of 200 miles of mill, to be cash less 1 percent within 10 days of delivery to customer; shipments beyond the above mentioned area, to be cash less 1 percent on delivery to the carrier.

c. By-products, as follows: sight draft, order notify, bill of lading attached, net cash payable on arrival.

d. Shipments to Puerto Rico, as follows: net cash with draft drawn dated same as bill of lading, with bill of lading and marine insurance certificate attached, seller's order, notify buyer, and draft to be paid promptly upon arrival and examination of goods, but, not to exceed five full business days after goods have been discharged from ship; except, however, that when sale is to a buyer resident in continental United States, terms shall be net

cash, draft with bill of lading attached, payable on arrival and examination of goods at American destination (port of shipment), or cash less 1 percent if paid within 10 days from date of shipment.

e. On all sales for direct shipment to foreign countries, the terms shall be optional with the seller.

ARTICLE VI—BROKERAGE

1. No Miller shall pay a brokerage charge unless a brokerage service has in fact been rendered and no Miller shall pay more than one brokerage charge on any transaction.

2. No Miller shall pay any brokerage charge in excess of the following schedule:

a. On clean rice and rice flour, except packaged rice, sold within the boundaries of the continental United States, 8 cents per 100 pounds.

b. On brewers rice and screenings, 5 cents per 100 pounds.

c. On rice bran and rice polish and other rice by-products, 50 cents per ton, and on rice hulls 25 cents per ton.

d. On all rice sold in Puerto Rico, 8 cents per 100 pounds.

3. No Miller shall pay any brokerage charge on the resale of rejected rice when such resale is made by the same broker.

ARTICLE VII—MARKETING FUND

1. Each Miller on or before the 10th day of October, 1933 shall pay into a Marketing Fund ten cents for each barrel of rough rice milled by him between the effective date hereof and October 1, 1933, and

on or before the 10th day of each month thereafter, each Miller shall pay into the Marketing Fund ten cents for each barrel of rough rice milled by him during the preceding month. If any Miller fails to make any such payment by the 16th day of the month in which such payment is due, he shall pay into the Marketing Fund an additional five cents per barrel for each barrel of rough rice milled by him during the said preceding month.

2. Expenses incurred by the Control Committee, and expenses (approved by the Control Committee) incurred by any other committees appointed hereunder, shall be paid from the Marketing Fund, unless any such expense shall be disapproved by the Secretary. No member of the Control Committee shall be compensated for his services in excess of his actual expenses, plus $10.00 per day for each day of attendance at meetings of the Control Committee or for each day devoted at the request of the Control Committee to the business thereof.

3. The Marketing Fund shall be deposited in banks to be selected by the Control Committee and may be invested by the Control Committee in only such securities as are approved for the investment of Postal Savings deposits by the United States Post Office Department.

4. It is the intention of the parties hereto that the surplus of the Marketing Fund in excess of expenses shall be used by the Control Committee within its sole discretion, but subject to disapproval by the Secretary, to increase consumption of American grown rice, create new markets and to maintain reasonable domestic prices by financing the export of rice.

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ARTICLE VIII—INVESTIGATIONS AND APPEALS

1. Each Miller shall maintain a system or systems of accounting which shall accurately reflect a true account and condition of its business. Each Miller shall furnish such information to the Secretary as the Secretary may request, including information on and in accordance with forms supplied by him.

2. Each Miller's books and records shall, during the usual hours of business, be subject to the examination of the Secretary for the purpose of assisting the Secretary in the furtherance of his duties with respect to this Agreement, including the verification of any information which the Secretary may require any Miller to give.

3. Except as may be necessary in the course of an investigation of a supposed breach of any provision of this Agreement, all information obtained by the Secretary pursuant to this Article shall remain the confidential information of the Secretary, and shall not be disclosed by him except upon lawful demand by the President, by either House of the Congress, or any committee thereof, or by any court. The Secretary, however, may combine and publish the information obtained in the form of general statistical studies or data.

4. If information shall come to the knowledge of any Miller of the violation of any of the terms or conditions of this Agreement by any other Miller, the Miller having such knowledge shall notify the Control Committee of such violation by a written statement containing the charges and all available substantiating evidence.

5. If the Control Committee upon receipt of information from any source shall find therein evidence that a Miller is violating any terms or conditions of this Agreement, it shall thereupon be the duty of the Control Committee to investigate such suspected violation. The Control Committee may call upon said Miller to furnish a statement of the facts under oath.

6. In aid of any investigation with respect to suspected breach of this Agreement by any Miller or with respect to any dispute arising out of this Agreement, the Control Committee may designate a reputable firm of public accountants to examine his books, during the usual business hours, and report upon the matters that shall have been specified in a direction to such accountants. Said direction to the accountants must specifically set forth the matters upon which a report is required and said accountants shall not reveal to the Control Committee any other matters whatsoever disclosed by said examination.

7. After due investigation, if it is the opinion of the Control Committee that a Miller has violated the terms or conditions of this Agreement, it may:

a. Order said Miller to discontinue such violation, and/or. (*sic.*)

b. Collect from said Miller as damages a sum not exceeding twice the profit, if any, realized by such Miller in the transaction in respect of which such violation occurred, or, if such profit cannot be ascertained, not more than $1,000, as liquidated damages. Any moneys collected by the Control Board pursuant to this subsection shall be paid into the Marketing Fund for the general purposes thereof.

c. Report such violation to the Secretary, with or without a recommendation.

If said Miller shall fail to comply with any such order of the Control Committee and/or pay any such damages and shall not take an appeal to the Secretary as hereinafter provided, the Control Committee shall report such non-compliance to the Secretary.

8. An appeal in writing may be taken to the Secretary from any decision of the Control Committee with reference to a dispute or investigation or from any order of or damages assessed by the Control Committee within ten days. Pending the disposition by the Secretary of any appeal the parties involved shall abide by the decision rendered by the Control Committee, unless the Secretary shall rule otherwise pending such disposition. In the event of an appeal, it shall be the duty of the Control Committee to forward to the Secretary the complete record of the Control Committee with regard to the matter.

9. The Secretary may terminate this Agreement as to any Miller if the Secretary determines that said Miller has violated this Agreement, or has failed to comply with any order of the Secretary or the Control Committee or has failed to pay any damages imposed by the Control Committee and confirmed, in the event of an appeal, by the Secretary. The Millers hereby agree that the remedy at law for a violation of this Agreement is inadequate and further agree that the Secretary, or the Control Committee or its officers, or any Miller may institute appropriate proceedings in any court of competent jurisdiction, looking to an order or

decree enjoining the violation of any of the terms or conditions of this Agreement.

10. The Millers expressly request and consent to licensing by the Secretary pursuant to Section 8 (3) of the Act, if and when the Secretary deems such licensing necessary or desirable, and in whatever form the Secretary shall determine.

ARTICLE IX—MISCELLANEOUS

1. If any provision of this Agreement is declared invalid or the applicability thereof to any person, circumstance or thing is held invalid, the validity of the remainder of this agreement and/or the applicability thereof to any other person, circumstance or thing shall not be affected thereby.

2. The Secretary may name any person to act as his agent or representative in connection with the performance of any of his duties hereunder or in connection with the exercise of any of his rights hereunder.

3. Nothing herein contained is or shall be construed to be in derogation or modification of the rights of the Secretary to exercise any powers granted to him by the Act and, in accordance with such powers, to act in the premises whenever he shall deem it advisable.

4. The Control Committee may from time to time propose amendments to or modifications of this Agreement and any such amendment or modification shall become effective at the date designated by the Control Committee, provided such amendment or modification shall have first been approved by Millers who milled more than half of the total rough rice milled during the preceding year, and by the Secretary.

5. No member of any committee or any employee thereof shall be held responsible individually in any way whatsoever to any Miller or any other person, for errors in judgment, mistakes, or other acts either of commission or omission, as such member or employee, except for acts of dishonesty. The liability of the Millers hereunder is several and not joint and no Miller shall be liable for the default of any other Miller.

6. If and when the Secretary determines that compulsory Federal-State grading is necessary to protect the interests of producers of rice, the Millers hereby agree that upon notice by the Secretary, in such manner as he shall determine, they will thereafter purchase no rough rice which is not accompanied by a certificate issued by a Federal-State Grading Office.

ARTICLE X—PARTIES AND TERMINATION

1. Any Miller as hereinabove in Article I defined may become a party to this Agreement on equal terms with the contracting Millers by execution and deposit with the Secretary of a counterpart of this Agreement.

2. This Agreement shall become effective at such date as the Secretary may declare above his signature attached hereto and shall continue in force until terminated in one of the following ways:

a. The Secretary may at any time terminate this Agreement by Agreement, by giving notice by means of a press release, or in any other manner which the Secretary may determine.

b. Upon the written request of Millers, the sum of whose average total production of clean rice over

the period of the last three preceding calendar years equals 75% of the average of the total production of clean rice by all Millers in said years, the Secretary shall, by notice in writing net by registered mail, addressed to the Control Committee, on or before the 20th day of any month, terminate said contract as of the end of such month.

c. This Agreement shall in any event terminate when the provisions of the Act which authorize this Agreement shall cease to be in effect.

3. The benefits, privileges and immunities conferred by virtue of this Agreement shall cease upon its termination except with respect to acts prior thereto, and the benefits, privileges and immunities conferred by virtue of this Agreement upon any party signatory hereto shall cease upon its termination as to such party, except with respect to acts done prior thereto.

This Agreement may be executed in multiple counterparts. Each Miller becoming a party to this Agreement by execution of a counterpart shall sign and deposit with the Secretary said counterpart and, if a corporation shall deposit together with said signed counterpart a certified copy of a resolution of its Board of Directors authorizing such signing and delivery. This Agreement together with all counterparts shall constitute one and the same instrument as if all signatures were contained in one original.

In witness whereof the contracting millers, acting under the provisions, of the Agricultural Adjustment Act, and not otherwise, for the purposes and within the limitations herein contained, have hereunto set their respective hands and seals.

Attest:

STEINHAGEN RICE MILLING CO.,
By B. A. STEINHAGEN, *Pres.*

Attest:

NOBLE TROTTER RICE MFG. CO., INC.,
By J. B. TROTTER, *Secy. & Treas.*

Attest:

LA-ARK MILLING CO., INC.,
By AUBREY J. PIC, *Secy. & Treas.*

Attest:

REPUBLIC RICE MILL, INC.,
By GUY LANDRY, *Secy.-Treas.*

Attest:

SIMON'S RICE MILL,
By WALTER SIMON.

Attest:

KAPLAN RICE MILL, INC.,
By B. C. DELAHOUSSAYE, *Pres.*

Attest:

BATON ROUGE RICE MILL, INC.,
By F. J. JUMONVILLE, *Pres.*

Attest:

SMITH RICE MILL CO.,
By G. E. SMITH, *Pres.*

Attest:

WALTON RICE MILL, INC.,
By G. R. WALTON, *Pres.*

Attest:

ARK. RICE GROWERS COOP.,
By H. K. SMITH, *Pres.*

Attest:

ARK. RICE GROWERS COOP.,
DeWitt Div., L. A. BLACK, *Mgr.*

Attest:

UNITED RICE MILLING PRODUCTS CO., INC.,
By F. P. SCHAFER, *Pres.*

Attest:

MOUTON RICE MILLING CO.,
By GEO. C. MOUTON, *Secy.-Treas.*

Attest:

JONESBORO RICE MILL CO.,
By J. T. WHITE, *Operator.*

Attest:

EL CAMPO RICE MILLING CO.,
By R. A. J. JEMBRY, *Secy.-Treas.*

Attest:

NEW IBERIA RICE PRODUCTS, INC.,
By P. A. LANDRY, *President.*

Attest:

LEVY RICE MILLING CO., INC.,
By JAKE LEVY, *Pres.*

Attest:

AMERICAN RICE MILL,
By C. J. FREELAND, *Vice-Pres.*

Attest:

ADOLPH PFEFFER RICE MILLING CO.,
By ADOLPH PFEFFER, *Mgr.*

Attest:

BENJ. DAIGLE RICE MILLS,
By E. T. BEL, *Mgr.*

Attest:

THE BAY CITY RICE MILLS,
By R. Q. PEGRAM.

Attest:

HERDER RICE MILLING CO., INC.,
By R. L. WILLIAMS, *Mgr.*

Attest:

RICE CITY MILLING CO., INC.,
By ALEX. BROWN, *Pres.*

Attest:

RICKERT RICE MILLS, INC.,
By FRED W. RICKERT, *Pres.*

Attest:

ACADIA RICE MILLING CO., INC.,
By J. H. MALAY, *Pres.*

Attest:

MERMENTAU RICE MILLING CO.,
By C. M. C. YOUNCE,

Attest:

TEXAS RICE MILLING CO.,
By J. F. COLEMAN, *Gen. Mgr.*

Attest:

PRITCHARD RICE MILLING CO.,
By P. F. PRITCHARD, *V. P.*

Attest:

TYRRELL RICE MILLING CO.,
By V. O. CLARK.

Attest:

FARMERS RICE MILLING CO., INC.,
By CARL T. HIMEL.

Attest:

DORE RICE MILL,
By A. B. DORE, *Prop.*

Attest:

ESTHERWOOD RICE MILL,
By D. L. SIMON, *Prop.*

Attest:

DIXIE RICE MILL, INC.,
By J. B. HANLAN, *Pres.*

Attest:

LEWIS & PARROTT RICE MILL,
By R. S. PARROTT.

Whereas, it is provided by Section 8 of the Agricultural Adjustment Act approved May 12, 1933, as amended as follows:

> SEC. 8. In order to effectuate the declared policy, the Secretary of Agriculture shall have power—
>
> * * * * *
>
> "(2) To enter into marketing agreements with processors, associations of producers, and others engaged in the handling, in the current of interstate or foreign commerce of any agricultural commodity or product thereof, after due notice and opportunity for hearing to interested parties. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful: *Provided,* That no such agreement shall remain in force after the termination of this Act."

Whereas, it appears, after due consideration, that this is a Marketing Agreement between the Secretary and persons engaged in the milling and marketing of rice in the States of Louisiana, Arkansas, Texas, and Tennessee, in the current of interstate and foreign commerce, and

Whereas, it appears, after due consideration, that the aforesaid Marketing Agreement will tend to effectuate the policy of Congress set forth in Section 2 of the Agricultural Adjustment Act in that such Marketing Agreement will:

(a) establish and maintain such balance between the market supply and consumption of rice as will reestablish prices to the producers thereof at a level that will give such agricultural commodity a purchasing power with respect to articles that farmers buy equivalent to the purchasing power of such agricultural commodity in the base period, as defined in Section 2 of said Act; and

(b) approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is possible in view of the current consumptive demand in domestic and foreign markets; and

(c) protect the consumer's interest by readjusting the farm production of such agricultural commodity at such level as will not increase the percentage of the consumers' retail expenditures for such agricultural commodity which was returned to the farmer, above the percentage which was returned to the farmer in the pre-war period, August 1909–July 1914.

Now, therefore, The Secretary of Agriculture acting under the provisions of the Agricultural Adjustment Act, for the purposes and within the limitations therein contained, and not otherwise, does hereby execute this Agreement under his hand and the official seal of the Department of Agriculture in the City of Washington, District of Columbia, on this 13th day of October 1933.

Pursuant to the provisions hereof, I declare this Agreement to be effective on and after 12:01 A. M. Eastern Standard Time October 16, 1933.

_____,

Secretary of Agriculture.

SCHEDULE 1

The grades used as a basis for this schedule are the United States Standards for Rough Rice. The premiums and discounts named hereinafter shall apply in all cases to all classes in the standards except when special exceptions are made and named.

Premiums apply only in the case of lots of rough rice for which the milling quality estimate for head rice is at least 5 pounds greater than the requirement for the designation Prime.

Discounts apply for each grading factor in the standards. When rough rice is graded lower than No. 1 for two or more factors, or lower than No. 1 for one or more factors and lower than the highest designation for two or more special grades, the accumulated discount shall be applied, in accordance with all of the provisions of the schedule.

For the factor Total Damaged Kernels:

The discount for No. 2 rough rice under No. 1 rough rice shall be 3 percent of the selling price per barrel.

The discount for No. 3 rough rice under No. 2 rough rice shall be 4 percent of the selling price per barrel.

The discount for No. 4 rough rice under No. 3 rough rice shall be 4 percent of the selling price per barrel.

The discount for No. 5 rough rice under No. 4 rough rice shall be 6 percent of the selling price per barrel.

The discount for No. 6 rough rice under No. 5 rough rice shall be 6 percent of the selling price per barrel.

The discount for Sample Grade rough rice under No. 6 rough rice shall be 1 percent of the selling price per barrel for each full percent of total damaged kernels in excess of the percent of total damaged kernels allowed for grade No. 6 up to 5 percent of such excess, and one-half of 1 percent of the selling price per barrel for each full percent of total damaged kernels in excess of 25 percent.

In case a lot, or part of a lot, of rough rice is of a quality more than one grade, or more than one special designation, below the quality of the rice sold, the discount for the lot or part of lot, as the case may be, shall be the accumulated discount between the quality of the rice sold and the quality of the inferior lot or part of lot.

A discount shall be allowed for either "total damaged kernels" or for "heat damaged kernels" but discounts shall not be allowed for both factors on one lot of rice.

For the factor Heat Damaged Kernels:

The discount for No. 2 rough rice under No. 1 rough rice shall be 2 percent of the selling price per barrel.

The discount for No. 3 rough rice under No. 2 rough rice shall be 2 percent of the selling price per barrel.

The discount for No. 4 rough rice under No. 3 rough rice shall be 2 percent of the selling price per barrel.

The discount for No. 5 rough rice under No. 4 rough rice shall be 2 percent of the selling price per barrel.

The discount for No. 6 rough rice under No. 5 rough rice shall be 2 percent of the selling price per barrel.

The discount for Sample Grade rough rice under No. 6 rough rice shall be 1 percent of the selling price per barrel for each 0.1 percent of heat-damaged kernels in excess of the percent of heat-damaged kernels allowed for grade No. 6 up to 1 percent of such excess, 1 percent of the selling price per barrel for each half of 1 percent or fraction thereof of heat-damaged kernels in excess of 1.1 percent up to 5 percent of such excess, and 1 percent of the selling price per barrel for each 1 percent or fraction thereof of heat-damaged kernels in excess of 6.1 percent.

In case a lot, or part of a lot, of rough rice is of a quality more than one grade, or more than one special designation, below the quality of the rice sold, the discount for the lot or part of lot, as the case may be, shall be the accumulated discount between the quality of the rice sold and the quality of the inferior lot or part of lot.

A discount shall be allowed for either "total damaged kernels" or for "heat-damaged kernels" but discounts shall not be allowed for both factors on one lot of rice.

For the factor Red Rice:

For the classes Honduras, Edith, Fortune, Carolina, and American Patna.

The discount for No. 2 rough rice under No. 1 rough rice shall be 3 percent of the selling price per barrel.

The discount for No. 3 rough rice under No. 2 rough rice shall be 5 per cent of the selling price per barrel.

The discount for No. 4 rough rice under No. 3 rough rice shall be 5 per cent of the selling price per barrel.

The discount for No. 5 rough rice under No. 4 rough rice shall be 6 per cent of the selling price per barrel.

The discount for No. 6 rough rice under No. 5 rough rice shall be 6 per cent of the selling price per barrel.

The discount for Sample Grade rough rice under No. 6 rough rice shall be one-half of 1 per cent of the selling price per barrel for each full per cent of red rice in excess of the per cent of red rice allowed for grade No. 6.

In case a lot, or part of a lot, of rough rice is of a quality more than one grade, or more than one special designation, below the quality of the rice sold, the discount for the lot or part of lot, as the case may be, shall be the accumulated discount between the quality of the rice sold and the quality of the inferior lot or part of lot.

For the factor Red Rice:

For the classes Lady Wright, Early Wright, Delitus, Shomed, Blue Rose, Early Prolific, and Louisiana Pearl, and the sub-class Japan.

The discount for No. 2 rough rice under No. 1 rough rice shall be 2 per cent of the selling price per barrel.

The discount for No. 3 rough rice under No. 2 rough rice shall be 3 percent of the selling price per barrel.

The discount for No. 4 rough rice under No. 3 rough rice shall be 4 percent of the selling price per barrel.

The discount for No. 5 rough rice under No. 4 rough rice shall be 6 percent of the selling price per barrel.

The discount for No. 6 rough rice under No. 5 rough rice shall be 6 percent of the selling price per barrel.

The discount for Sample Grade rough rice under No. 6 rough rice shall be one-half of 1 percent of the selling price per barrel for each full percent of red rice in excess of the percent of red rice allowed for grade No. 6.

In case a lot, or part of a lot, of rough rice is of a quality more than one grade, or more than one special designation, below the quality of the rice sold, the discount for the lot or part of lot, as the case may be, shall be the accumulated discount between the quality of the rice sold and the quality of the inferior lot or part of lot.

For the factor Cereal Grains:

The discount for No. 2 rough rice under No. 1 rough rice shall be 1 percent of the selling price per barrel.

The discount for No. 3 rough rice under No. 2 rough rice shall be 1 percent of the selling price per barrel.

The discount for No. 4 rough rice under No. 3 rough rice shall be 1 percent of the selling price per barrel.

The discount for No. 5 rough rice under No. 4 rough rice shall be 1 percent of the selling price per barrel.

The discount for No. 6 rough rice under No. 5 rough rice shall be 1 percent of the selling price per barrel.

The discount for Sample Grade rough rice under No. 6 rough rice shall be 1 percent of the selling price per barrel for each .1 percent of cereal

grains in excess of the percent of cereal grains allowed for grade No. 6.

In case a lot, or part of a lot, of rough rice is of a quality more than one grade, or more than one special designation, below the quality of the rice sold, the discount for the lot or part of lot, as the case may be, shall be the accumulated discount between the quality of the rice sold and the quality of the inferior lot or part of lot.

For the factor Rice of Other Classes:

The discount for No. 2 rough rice under No. 1 rough rice shall be 2 percent of the selling price per barrel.

The discount for No. 3 rough rice under No. 2 rough rice shall be 3 percent of the selling price per barrel.

The discount for No. 4 rough rice under No. 3 rough rice shall be 3 percent of the selling price per barrel.

The discount for No. 5 rough rice under No. 4 rough rice shall be 4 percent of the selling price per barrel.

The discount for Mixed rough rice under No. 5 rough rice shall be one-half of 1 percent of the selling price per barrel for each full 1 percent of rice of other classes in excess of the percent of rice of other classes allowed for grade No. 5.

In case a lot, or part of a lot, of rough rice is of a quality more than one grade, or more than one special designation, below the quality of the rice sold, the discount for the lot or part of lot, as the case may be, shall be the accumulated discount between the quality of the rice sold and the quality of the inferior lot or part of lot, except that the total

discount for this factor alone shall not in any case exceed 20 percent of the selling price per barrel.

For the factor Milling Quality—Head Rice:

For the classes Honduras, Edith, Fortuna, Carolina, and American Patna.

For rice for which the estimate of milling yield of head rice is in excess of the requirement for the designation Prime there shall be a premium of 5 percent of the selling price per barrel for each full 5 pounds over the requirement for the designation Prime.

The discount for rough rice of Good milling quality under Prime milling quality shall be 5 percent of the selling price per barrel.

The discount for rough rice of Medium milling quality under Good milling quality shall be 5 percent of the selling price per barrel.

The discount for rough rice of Fair milling quality under Medium milling quality shall be 5 percent of the selling price per barrel.

The discount for rough rice of Ordinary milling quality under Fair milling quality shall be 5 percent of the selling price per barrel.

The discount for rough rice of Low milling quality under Ordinary milling quality shall be 1 per cent of the selling price per barrel for each full pound of head rice between the estimated yield and the requirement for Ordinary milling quality.

In case a lot, or part of a lot, of rough rice is of a quality more than one grade, or more than one special designation, below the quality of the rice sold, the discount for the lot or part of lot, as the case may be, shall be the accumulated discount between the quality of the rice sold and the quality of

the inferior lot or part of lot, except that when a discount may be claimed for the factor Moisture or for the factor Weevils the accumulated discount for milling quality shall not exceed 10 per cent of the selling price per barrel.

For the factor Milling Quality—Head Rice:

For the classes Lady Wright, Early Wright, Delitus, Shomed, Blue Rose, Early Prolific, and Louisiana Pearl, and the sub-class Japan.

For rice for which the estimate of milling yield of head rice is in excess of the requirement for the designation Prime there shall be a premium of 3 per cent of the selling price per barrel for each full 5 pounds over the requirement for the designation Prime.

The discount for rough rice of Good milling quality under Prime milling quality shall be 3 per cent of the selling price per barrel.

The discount for rough rice of Medium milling quality under Good milling quality shall be 4 per cent of the selling price per barrel.

The discount for rough rice of Fair milling quality under Medium milling quality shall be 4 percent of the selling price per barrel.

The discount for rough rice of Ordinary milling quality under Fair milling quality shall be 4 percent of the selling price per barrel.

The discount for rough rice of Low milling quality under Ordinary milling quality shall be 1 percent of the selling price per barrel for each full pound of head rice between the estimated yield and the requirement for Ordinary milling quality.

In case a lot, or part of a lot, of rough rice is of a quality more than one grade, or more than one

special designation, below the quality of the rice sold, the discount for the lot or part of lot, as the case may be, shall be the accumulated discount between the quality of the rice sold and the quality of the inferior lot or part of lot, except that when a discount may be claimed for the factor Moisture or for the factor Weevils the accumulated discount for milling quality shall not exceed 10 percent of the selling price per barrel.

For the factor Milling Quality—Total Yield:

The discount for rough rice of B milling quality under A milling quality shall be one and one-half percent of the selling price per barrel.

The discount for rough rice of C milling quality under B milling quality shall be one and one-half percent of the selling price per barrel.

The discount for rough rice of D milling quality under C milling quality shall be one and one-half percent of the selling price per barrel.

The discount for rough rice of E milling quality under D milling quality shall be one and one-half percent of the selling price per barrel.

The discount for rough rice of F milling quality under E milling quality shall be one-half of 1 percent of the selling price per barrel for each full pound of total yield between the estimated total yield and the requirement for E milling quality.

In case a lot, or part of a lot, of rough rice is of a quality more than one grade, or more than one special designation, below the quality of the rice sold, the discount for the lot or part of lot, as the case may be, shall be the accumulated discount between the quality of the rice sold and the quality of the inferior lot or part of lot, except that when

discount may be claimed for the factor Moisture or for the factor Weevils the accumulated discount for milling quality shall not exceed 10 percent of the selling price per barrel.

For the factor Stain:

The discount for Stained rough rice under Bright rough rice shall be 3 percent of the selling price per barrel, except that no discount shall be allowed for stained appearance when a discount may be claimed for the factor Moisture, or for Muddy Kernels, or for Mud Lumps.

For the factor Weevils:

The discount for Weevily rough rice under rough rice free of live weevils shall be 3 percent of the selling price per barrel.

For the factor Musty Odor:

The discount for Musty rough rice under rough rice having a Natural odor shall be 5 percent of the selling price per barrel, except that if a discount is claimed for the factor Moisture no discount may be claimed for Musty odor.

For the factor Moisture:

The discount for Damp rough rice under rough rice containing not more than 14 percent of moisture shall be 3 percent of the selling price per barrel.

The discount for Wet rough rice under Damp rough rice shall be 3 percent of the selling price per barrel.

The discount for Very Wet rough rice under Wet rough rice shall be 1 percent of the selling price per barrel for each full 0.5 percent of moisture in excess of the percent of moisture allowed for the designation Wet.

In case a lot, or part of a lot, of rough rice is of a quality more than one grade, or more than one special designation, below the quality of the rice sold, the discount for the lot or part of lot, as the case may be, shall be the accumulated discount between the quality of the rice sold and the quality of the inferior lot or part of lot, except that if a discount is claimed for the factor Musty Qdor no discount may be claimed for Moisture.

For the factor Weed Seeds:

The discount for Slightly Seedy rough rice under rough rice containing not more than 0.1 percent of weed seeds shall be 3 percent of the selling price per barrel.

The discount for Seedy rough rice under Slightly Seedy rough rice shall be 5 percent of the selling price per barrel.

The discount for Very Seedy rough rice under Seedy rough rice shall be 0.1 percent of the selling price per barrel for each 0.1 percent of weed seeds in excess of the percent of weed seeds allowed for the designation Seedy.

In case a lot, or part of a lot, of rough rice is of a quality more than one grade, or more than one special designation, below the quality of the rice sold, the discount for the lot or part of lot, as the case may be, shall be the accumulated discount between the quality of the rice sold and the quality of the inferior lot or part of lot.

For the factor Chalky Kernels:

The discount for Slightly Chalky rough rice under rough rice containing not more than 3 percent of chalky kernels shall be 2 percent of the selling price per barrel.

The discount for Chalky rough rice under Slightly Chalky rough rice shall be 3 percent of the selling price per barrel.

The discount for Very Chalky rough rice under Chalky rough rice shall be one-half of 1 percent of the selling price per barrel for each full 1 percent of chalky kernels in excess of the percent of chalky kernels allowed for the designation Chalky.

In case a lot, or part of a lot, of rough rice is of a quality more than one grade, or more than one special designation, below the quality of the rice sold, the discount for the lot or part of lot, as the case may be, shall be the accumulated discount between the quality of the rice sold and the quality of the inferior lot or part of lot.

For the factor Muddy Kernels and Mud Lumps:

The discount for Slightly Muddy rough rice under rough rice containing not more than 1 percent of muddy kernels and not more than 0.1 percent of mud lumps shall be 3 percent of the selling price per barrel.

The discount for Muddy rough rice under Slightly Muddy rough rice shall be 5 percent of the selling price per barrel.

The discount for Very Muddy rough rice under Muddy rough rice shall be 0.1 percent of the selling price per barrel for each 0.1 percent of mud lumps or each full 1 percent of muddy kernels in excess of the percent of mud lumps or percent of muddy kernels allowed for the designation Muddy.

In case a lot, or part of a lot, of rough rice is of a quality more than one grade, or more than one special designation, below the quality of the rice sold, the discount for the lot or part of lot, as the

case may be, shall be the accumulated discount between the quality of the rice sold and the quality of the inferior lot or part of lot.

APPENDIX

I, Henry A. Wallace, Secretary of Agriculture of the United States of America, acting under the Agricultural Adjustment Act, approved May 12, 1933, as amended, and pursuant to Article 4, Section 2 of the Marketing Agreement for rice milled in the States of Texas, Arkansas, Louisiana and Tennessee, entered into by certain rice millers in the States of Texas, Arkansas, Louisiana and Tennessee, and the Secretary of Agriculture, effective October 16, 1933, do hereby fix the price per barrel of 162 pounds of number 1 prime milling quality rough rices as follows: Early Prolific $2.75; Japan $2.85; Blue Rose $3.15; Lady Wright $3.15; Edith $3.40; Fortuna $3.45; Rexoro $3.50.

In witness whereof I have hereunto set my hand and the official seal of the Department of Agriculture affixed in the City of Washington, District of Columbia, on this 14th day of October, 1933.

H. A. WALLACE,
Secretary of Agriculture.

PART E

Statistical Data Compiled from Department of Agriculture Reports, showing Monthly Farm Prices of Louisiana Rice and Wholesale Price of Clean, Fancy Blue Rose Rice (Tables I, II, and III):

TABLE I.—*Monthly Farm Prices of Louisiana Rice, 1923 to Date*[1]

[In Dollars Per Barrel]

Year	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July
1923-24	3.71	3.89	4.00	3.85	3.82	3.96	4.00	3.89	4.03	4.68	4.86	4.93
1924-25	4.75	4.64	4.61	4.72	5.08	5.18	5.08	5.00	4.97	5.11	5.36	5.40
1925-26	5.26	5.15	5.18	5.47	5.51	5.54	5.40	5.15	4.72	4.93	5.08	5.26
1926-27	4.43	4.25	4.03	3.92	3.74	3.85	3.89	3.74	3.78	3.74	3.76	3.74
1927-28	[illegible]											
1928-29	3.20	3.06	3.20	3.28	3.42	3.38	3.42	3.46	3.31	3.35	3.38	3.38
1929-30	3.53	3.56	3.53	3.46	3.53	3.56	3.85	3.71	3.85	3.82	3.74	3.56
1930-31	3.17	2.88	2.95	2.74	2.63	2.74	2.81	2.74	2.77	2.66	2.66	2.63
1931-32	2.02	1.69	1.84	2.16	2.12	2.02	1.91	1.87	1.76	1.76	1.73	1.66
1932-33	1.69	1.48	1.48	1.44	1.44	1.37	1.30	1.44	1.51	2.02	2.02	2.20
1933-34	2.23	2.45	2.77	2.74	2.70	2.74	2.84	2.84	2.84	2.74	2.77	2.70
1934-35	2.84	2.52	2.77	2.95	2.81	2.77	2.95	3.06	3.10	3.13	3.24	3.17
1935-36	2.66	1.73	1.98	2.34	------	------	------	------	------	------	------	------

[1] Average spot prices, as of the 15th of the month.

SOURCE: Bureau of Crop Estimates, United States Department of Agriculture, data from August 1923–November 1934, published in December 1934 in *Crops and Markets*. Subsequent data published December 11, 1935, in Average Prices Received by Louisiana Farmers for Rice (Rough) September, 1934 to date. These quotations are published in terms of "cents per bushel" of 45 pounds and have been converted to a barrel of 162 pounds on the basis of 3.6 bushels to 1 barrel.

TABLE II.—*Rice, Blue Rose, Clean, Fancy: Wholesale Price Per Pound, New Orleans, by Months, 1924–25 to Date*

[In Cents Per Pound]

Year	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Average
1924–25	6.62	6.38	5.88	6.40	6.56	6.85	6.88	6.75	6.69	7.12	7.38	7.50	6.75
1925–26	7.12	6.62	6.62	7.12	7.19	7.38	7.05	7.00	6.88	7.00	6.88	6.88	6.98
1926–27	6.75	6.00	5.62	5.12	5.00	4.88	4.88	4.81	4.62	4.88	5.05	4.62	5.19
1927–28	4.62	4.62	4.25	3.88	4.00	4.00	3.81	3.75	4.00	4.38	4.50	4.25	4.17
1928–29	4.25	------	4.06	4.12	4.12	4.05	4.00	4.00	4.00	4.00	4.00	4.12	[1] 4.07
1929–30	4.50	4.25	4.25	4.00	3.94	4.25	4.38	4.50	4.38	4.62	4.50	4.50	4.34
1930–31	4.50	4.12	3.88	3.62	3.62	3.50	3.62	3.50	3.50	3.50	3.38	3.38	3.68
1931–32	3.25	3.12	2.88	2.94	2.94	2.84	2.66	2.47	2.28	2.12	2.21	2.00	2.64
1932–33	2.08	2.26	2.14	2.01	1.94	1.89	1.81	1.96	2.09	2.65	2.79	2.89	2.21
1933–34	3.18	3.45	3.75	3.80	3.87	3.90	3.90	3.90	3.90	3.90	3.90	3.83	3.78
1934–35	3.74	3.70	3.68	3.55	3.57	3.42	3.38	3.64	3.76	3.95	4.08	4.16	3.72
1935–36	4.07	4.10	4.28	4.52	------	------	------	------	------	------	------	------	------

[1] Average for 11 months.

SOURCE: 1935 United States Department of Agriculture Year Book, page 420, August 1924–December 1934. Prices from January 1935, from weekly *Market News Service*, United States Department of Agriculture.

TABLE III.—*Mathematical computation based on Tables I and II, showing Calculated Spread Between Fancy Blue Rose, New Orleans, and Monthly Louisiana Farm Price Cents per pound or Dollars per 100 pounds*

Year	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July
1923–24	.85	1.23	1.50	1.40	1.06	1.29	1.25	1.73	1.83	1.44	1.26	1.57
1924–25	1.87	1.74	1.27	1.68	1.48	1.67	1.80	1.75	1.72	2.01	2.02	2.10
1925–26	1.86	1.47	1.44	1.65	1.68	1.84	1.65	1.85	2.16	2.07	1.80	1.62
1926–27	2.32	1.75	1.59	1.20	1.26	1.03	.99	1.07	.88	1.14	1.29	.86
1927–28	1.45	1.45	1.08	.71	.72	.76	.76	.51	.69	.92	.97	.90
1928–29	1.05	------	.86	.84	.70	.67	.58	.54	.69	.65	.62	.74
1929–30	.97	.69	.72	.54	.41	.69	.53	.79	.53	.80	.76	.78
1930–31	1.33	1.24	.93	.88	.99	.76	.81	.76	.76	.84	.72	1.05
1931–32	1.23	1.43	1.04	.78	.82	.82	.75	.60	.52	.36	.48	.34
1932–33	.39	.78	.53	.57	.50	.52	.51	.58	.58	.63	.77	.69
1933–34	.95	1.00	.98	1.06	1.17	1.16	1.06	1.06	1.06	1.16	1.13	1.08
1934–35	1.10	1.18	.91	.60	.76	.65	.43	.58	.66	.82	.84	.99
1935–36	1.41	2.37	2.30	2.18	------	------	------	------	------	------	------	------

PART F

CONGRESSIONAL RECORD, 74TH CONG., 1ST SESS., VOL. 79, No. 169, PP. 13700, 13701–13702

[Senator Smith, Chairman of the Senate Committee on Agriculture and Forestry, submitted the Conference Report to the Senate, which was agreed to by the Senate on August 15, 1935. In the discussion in the Senate prior to the final vote of agreement accepting the Conference Report, the following pertinent statements were made by various members of the Senate:]

Mr. BORAH. Mr. President, before the report is acted upon, I desire to see if I understand it.

Referring to amendment no. 114, the House has receded from its disagreement to the Senate amendment, and has agreed to it with an amendment, as follows:

(d) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counterclaim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax) unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice

by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court—

And so forth.

The question with me is, What is the modus operandi by which the party desiring to recover finally reaches court in case he desires to go to court?

Mr. SMITH. As it was discussed by the legal representatives, both of the Department and those who claim that distinction on the committee, wherever one had a claim, according to the custom under the law as it now prevails in reference to a rebate or refund of a tax, he goes before the internal-revenue collector and states his case. After the matter was discussed at some length, the members of the committee decided not to restrict the plaintiff to matters upon which the Commissioner either allowed or rejected the claims, but the whole record as it appeared before him should be the basis of the

claimant going into court. He can reject any finding of the Commissioner, unless it is in accordance with his claim, and go before a court of competent jurisdiction, and, upon the record as it is set up, he can prosecute his case.

* * * * * *

Mr. KING. Mr. President, I join in the request of the Senator from Idaho. May I call the attention of the Senator from Idaho to this language in the section to which the Senator referred, namely:

"Neither the claimant nor any person directly or indirectly under his control or having control over him has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on"—

This is the point—

"any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing"—

And so forth. Which would mean that if the Government had, as he believed, illegally collected a thousand dollars, and he demonstrated that he had not passed on any part of it except $1, he then would be denied relief under the interpretation of that language.

* * * * * *

Mr. GEORGE. Mr. President, I desire to be heard on that point.

I do not wish to have an incorrect interpretation placed upon the bill. The interpretation placed upon it by the Senator from Utah is not correct. At first blush, it

seemed to me to be the proper interpretation; and when we were considering this matter originally in the Senate that was my conclusion. A careful reading of the language, however, will disclose that the interpretation is not correct.

If the Senator will bear with me, I will read:

"No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counterclaim be allowed for, any amount of any tax"—

The "amount of any tax" refers back to that original subject, and it is not subject to the interpretation which seems to be about to be accepted here. *I wish the* RECORD *to show what is the correct interpretation of the language as I construe it.*

* * * * *

Mr. President, the amendment is not all that I desire, but I believe it preserves at least some legal rights of the claimant to a refund or to a credit for a tax illegally collected or a tax improperly collected. In my judgment, "the amount of any tax" refers back to the original language at the beginning of this particular section.

I desire to call attention to the fact that this is not a provision for authority for the claimant to sue. It is no grant of the right to sue. It is nothing but a limitation upon that right. In my judgment, it would not be strictly or technically construed by any court. It would be given a fair and a liberal interpretation. Therefore, if the claimant should make out a just case and secure a judgment of $500 for taxes illegally collected, I cannot believe the court would then deny a judgment simply because the claim-

ant had passed on a small amount of the $500 to the ultimate consumer, because I think it would be construed as it properly is—merely a limitation upon a right otherwise existing, and merely a condition.

I, myself, wish very much that the broad, unrestricted right of the claimant to come into court might have been given without so many hedging phrases and so much language; but, looking to what the court would ultimately do with this section, I have no doubt that a substantial right is given. It it true that the claim must first be made before the Commissioner of Internal Revenue, but that is true now in many instances. That was true under the revenue act which permitted a claim for refund for unsold automobile parts, and it is also true even in the administration of veterans' legislation. Before any suit may be commenced or maintained upon a policy of insurance, the veteran must make out his case and obtain an affirmative approval or disapproval of his alleged cause of action by the Administrator of Veterans' Affairs.

Properly construed, the real purpose, whether it be always properly administered, is to give the Government opportunity to settle a just case when all of the facts have been made to appear. Although the Commissioner of Internal Revenue is a political officer, of course, and generally is disposed to construe an act favorably to the Government, nevertheless, in many instances the facts are found properly, correctly, and justly, and the Government is enabled to make refunds without the necessity of further court action upon the record actually made up. (Italics supplied.)

PART G

The following is a list of cases decided since the adoption on August 24, 1935, of the Amendments to the Agricultural Adjustment Act by District courts or Circuit Courts of Appeals, in which it was sought to restrain the collection of processing taxes, together with a summary of the Court's views on the questions considered:

In *Henrietta Mills* v. *Hoey,* 12 Fed. Supp. 61 (S. D., N. Y.), decided September 5, 1935, it was held (1) that Sec. 3224 bars suit, exceptional circumstances not being present; (2) that Sec. 21 (d) (1) affords an adequate remedy, since the court would not assume that it will be unfairly administered by an executive officer; (3) that Sec. 21 (a) (2) takes away power to render a declaratory judgment.

In *Merkel, Inc.,* v. *Rasquin,* 12 Fed. Supp. 215 (E. D., N. Y.), decided September 5, 1935, it was held (1) that Sec. 3224 bars suit, exceptional circumstances not being present; (2) that the legislative threat of the removal of all right to sue for refunds had been removed.

In *Jedd Jones, Jr.,* v. *Viley,* 3 U. S. Law Week. 119 (Idaho), decided September 6, 1935, it was held (1) that Sec. 3224 bars suit, and that the remedy at law is adequate; (2) that the jurisdiction to render declaratory judgments had been removed.

In *Queen City Cotton Co.* v. *Martin,* 3 U. S. Law Week. 119 (Vt.), decided September 7, 1935, it was

held (1) that the entire Agricultural Adjustment Act was constitutional on the grounds that since it was not entirely clear that the Act was invalid the court thought it should not declare against constitutionality; (2) that Sec. 3224 bars the suit; (3) that Sec. 21 (d) (1) affords an adequate remedy at law.

In *Jose Escalante & Co.* v. *Fontenot,* 79 F. (2d) 343 (C. C. A. 5th), decided September 13, 1935, the court refused application for a temporary injunction on the ground that taxpayer has a plain and adequate remedy under the Agricultural Adjustment Act, as amended.

In *G. B. R. Smith Milling Co.* v. *Thomas,* 11 Fed. Supp. 833 (N. D., Tex.), decided September 20, 1935, it was held that Sec. 21 (d) (1) does not provide an adequate remedy at law, and that for that reason Sec. 3224 is inapplicable.

In *Meridian Grain & Elevator Co.* v. *Fly,* 12 Fed. Supp. 64 (S. D., Miss.), decided September 21, 1935, it was held (1) that Sec. 3224 bars the suit; (2) that Sec. 21 (d) (1) affords an adequate remedy; (3) that a multiplicity of suits is not present; (4) that unusual circumstances or exceptional hardship have not been shown; (5) that jurisdiction to render a declaratory judgment has been removed.

In *Fisher Flouring Mills Co.* v. *Vierhus,* 78 F. (2d) 889 (C. C. A. 9th), decided August 24, 1935, the court denied plaintiff's application for a temporary injunction on the ground that Sec. 3224 of the Revised Statutes barred injunctive relief.

In *Merchants Packing Co.* v. *Rogan,* 79 F. (2d) 1 (C. C. A. 9th), decided September 24, 1935, the court granted a temporary injunction pending appeal. The court distinguished the former decision

in *Fisher Flouring Mills* cases by saying " The situation is changed by amendment to the law affecting the remedy of a taxpayer to recover an invalid tax."

In *Baltic Mills Co.* v. *Bitgood,* 12 Fed. Supp. 132 (Conn.), decided August 28, 1935, it was held that Sec. 3224 does not bar suit because (1) Sec. 21 (d) (1) does not afford an adequate remedy, and (2) under that section a multiplicity of suits would be necessary. The court overlooked Sec. 21 (a) entirely, but considered its applicability in *Grosvenor-Dale Co.* v. *Bitgood, infra.*

In *Grosvenor-Dale Co.* v. *Bitgood,* 3 U. S. Law Week 84 (Conn.), decided September 26, 1935, it was held (1) that Sec. 3224 does not preclude all equitable relief; (2) that Sec. 21 (d) (1) does not provide an adequate remedy; (3) that Sec. 21 (a) removed all jurisdiction to grant injunctive relief in processing-tax suits. (Compare the court's decision in *Baltic Mills Co.* v. *Bitgood,* supra, where Sec. 21 (a) was overlooked.) On October 16, 1935, this opinion was modified, restraining the collection of taxes imposed on or before August 24, 1935.

In *Stratton & Co.* v. *Gagne,* 3 U. S. Law Week 119 (N. H.), decided September 28, 1935, it was said that on the particular allegations of plaintiff's bill of complaint, exceptional circumstances taking the case out of operation of Sec. 3224 were not shown.

In *Kingan & Co.* v. *Smith,* not yet officially reported (S. D. Ind.), decided September 30, 1935, it was held (1) that Sec. 3224 is declaratory of the common law; (2) that Sec. 21 (d) (1) does not provide an adequate remedy; (3) that a motion to

dismiss admits facts establishing factual basis for remedial inadequacy of law; (4) that a multiplicity of suits would be necessary under 21 (d) (1).

In *Larabee Flour Mills Co.* v. *Nee,* 1935 C. C. H., Vol. III–A, ¶ 9584, 132 (W. D., Mo.), decided October 3, 1935, it was held (1) that Sec. 3224 does not bar suit unless remedy at law is "clear and unquestioned"; (2) that motion to dismiss admits the truth of allegations of processor as to factual impossibility of showing whether the tax has been passed on—hence 21 (d) (1) does not afford an adequate remedy; (3) that the original act is unconstitutional because of delegation of legislative power; (4) that the ratification is ineffectual to validate taxes imposed before the amendment; (5) that the amended act cures prospectively the delegation of power and is valid; (6) that Congress may tax for the general welfare, which power is not limited to the effectuation of the enumerated powers.

In *G. M. Peet Packing Co.* v. *Kavanagh,* not yet officially reported (E. D., Mich.), decided October 15, 1935, the court held that Sec. 21 (d) (1) did not provide an adequate remedy principally on the ground that the processor would be denied a trial by jury, and that the record before the Commissioner, so far as the truth or untruth of the evidence is concerned, would bind the court.

In *A. P. W. Paper Co.* v. *Riley,* 3 Law Week 133 (N. D., N. Y.), decided October 18, 1935, the court held (1) that the original act is unconstitutional; (2) that Sec. 3224 does not bar suit; (3) that Sec. 21 (d) (1) does not provide an adequate remedy; (4) that if either Sec. 3224 or 21 (a) be construed as

denying all access to equity court, relegating defendant to inadequate remedy at law, it is unconstitutional; (5) that the amended Agricultural Adjustment Act does not cure the delegation of power and is unconstitutional, ratification being ineffective because act is invalid on grounds other than delegation; (6) that Sec. 21 (d) (1) is faulty in denying a trial *de novo* on a new record in District Court; (7) that exceptional circumstances exist.

In *Gold Medal Foods* v. *Landy,* not yet officially reported (D. C., Minn.), decided October 22, 1935, it was held (1) that Sec. 21 (a) is no broader than Sec. 3224 (Note: The taxes involved all accrued prior to the amendment), because Congress wished only to make it clear that the prohibition against injunctive relief applied in tax cases despite allegations that the processing levy was not a tax at all, and Congress did not intend to do away with equity jurisdiction if the relief it set up in 21 (d) (1) was inadequate; (2) that the possibility that taxpayer may recoup a payment from third party is not sufficient to oust equity jurisdiction; (3) that Sec. 21 (d) (1) provides an inadequate remedy, because it is indefinite and uncertain, and open to objection because the District Court does not try the case *de novo.*

In *Danahy Packing Co.* v. *McGowan,* 11 Fed. Supp. 920 (W. D., N. Y.), decided October 24, 1935, it was held that Sec. 21 (d) (1) does not provide an adequate remedy, on the premise that the motion to dismiss admits factual impossibility to prove tax was not passed on. The court also expressed grave doubt as to whether 21 (d) is constitutional.

In *Anton Rieder* v. *Rogan,* not yet officially reported (S. D., Cal.), decided October 28, 1935, it was held (1) that the Agricultural Adjustment Act is constitutional; (2) that Sec. 3224 is applicable, exceptional circumstances not being shown, and the fact that Congress might not appropriate funds to discharge established refund claim being irrelevant; (3) that Sec. 21 (a) prevents injunctive relief as well as Sec. 3224; (4) that Sec. 21 (d) (1) provides an adequate remedy, since difficulty of proof is not a basis of equity jurisdiction, and that if 21 (d) is an impossible burden it is invalid, and taxpayer may disregard it in a suit for refund; (5) that multiplicity of suits would not be necessary, since the issue could be conveniently tested in one suit by the one person, and prevention of a series of suits for periodic trespasses in collection of tax is not sufficient; (6) that no jurisdiction exists to grant a declaratory judgment.

In *Frye & Co.* v. *Vierhus,* not yet officially reported (W. D., Wash.), decided November 2, 1935, it was held (1) that Congress is free to regulate a suit against the United States in all its aspects; (2) that Sec. 21 (d) (1) must be construed as only applicable to a suit against the United States, and that if applicable to a suit against the collector it is invalid; (3) that right to sue the collector is unimpaired; (4) that taxpayer's remedy at law is plain and adequate.

In *Louisville Provision Co.* v. *Glenn,* not yet officially reported (W. D., Ky.), decided November 5, 1935, it was held (1) that no exceptional circumstances removing the case from operation of Sec. 3224 are shown; (2) that Sec. 21 (d) (1) affords complete remedy (on authority of *Jefferson Elec-*

tric Co., 291 U. S. 386); (3) that jurisdiction to render declaratory judgments had been removed.

In *Porto Rican American Tobacco Co.* v. *Tait,* not yet officially reported (Porto Rico), decided November 18, 1935, it was held (1) that Sec. 3224 barred the suit; (2) that the remedy provided by Sec. 21 (d) (1) is adequate.

In *Shenandoah Milling Co.* v. *Early,* 3 Law Week 119 (W. D. Va.), decided September 23, 1935, it was held (1) that Sec. 3224 is only declaratory of the common law; (2) that Sec. 21 (d) (1) does not afford an adequate remedy, it being factually impossible for processor to meet its requirements; (3) that the Government is in no position to urge "unjust enrichment" of processor; (4) that exceptional circumstances exist.

In *Inland Milling Co.* v. *Huston,* not yet officially reported (S. D. Iowa), decided November 22, 1935, it was held that (1) Sec. 3224 does not bar injunctive relief; (2) that Sec. (d) (1) does not give an adequate remedy.

In *John A. Gebelein, Inc.,* v. *Milbourne,* 12 Fed. Supp. 105, 121 (Md.), decided October 1, 1935, it was held that (1) the ratification is ineffectual because the Agricultural Adjustment Act is invalid on grounds other than delegation; (2) that Sec. 21 (a), as applied to taxes accruing prior to amendment, did not alter Sec. 3224, the court indicating the view that with respect to taxes accruing prospectively, Sec. 21 (a) is absolute in denying injunctive relief; (3) that Sec. 21 (d) (1) gives no adequate remedy because taxpayer is required to show more than mere fact that tax has been passed on. It is factually impossible for taxpayer to make the necessary proof, and Sec. 21 (d) (1) is faulty in denying trial

de novo in District Court; (4) that it is doubtful that Sec. 3224 has any application to processing-tax suits; Congress may have intended the amendments to substitute a completely new system of "corrective justice"; (5) that if Sec. 3224 is still applicable, nevertheless, the instant proceeding came within exception of unusual circumstances, since Sec. 21 (d) (1) provided a wholly inadequate remedy.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

Nos. 577-581.

RICKERT RICE MILLS, INC.,

Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana.

Respondent.

A. B. DORE,

Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana.

Respondent.

UNITED RICE MILLING PRODUCTS CO., INC.,

Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana.

Respondent.

BATON ROUGE RICE MILL, INC.,

Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana.

Respondent.

T. SIMON,

Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana.

Respondent.

BRIEF OF AMICI CURIAE.

NATHAN L. MILLER,
JOHN W. DAVIS,
WILLIAM R. PERKINS,
Attorneys for Amici Curiae.

THE COURT PRESS, N. Y. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 577.

RICKERT RICE MILLS, INC.,

Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana,

Respondent.

No. 578.

A. B. DORE,

Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana,

Respondent.

No. 579.

UNITED RICE MILLING PRODUCTS CO., INC.,

Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana,

Respondent.

No. 580.

BATON ROUGE RICE MILL, INC.,

Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana,

Respondent.

No. 581.

T. SIMON,

Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana,

Respondent.

BRIEF OF AMICI CURIAE.

I.

Statement.

Hygrade Food Products Corporation, National Biscuit Company, a corporation, and P. Lorillard Company, a corporation, file this brief amici curiae in opposition to the contention of the petitioner that the Agricultural Adjustment Act, familiarly known as the AAA, is constitutional and gives to petitioner the right to assess and collect taxes in the manner and for the purposes it provides.

Each of said concerns is a processor of a basic agricultural commodity in one or more factories located and operated in the United States. As such

it is subject in that respect to the terms and provisions of said AAA. And against each the United States is asserting its right to assess and collect, under the terms and provisions of said Act, taxes accrued and accruing before and after the 1935 Amendments.*

Each of these concerns has brought a suit in equity in a Federal District Court (as have other like concerns, so that the number of such suits now aggregate largely over one thousand) in which is sought an order restraining the further collection under said Act of taxes accrued both before and after the amendments of August 24th, 1935, on the ground that it is wholly unconstitutional and that the claim for refund, for many years existing as an established procedure for contesting such constitutionality, has been so circumscribed by limitations thereof by Sec. 21, added by Sec. 30 of the 1935 Amendments, as to make said procedure an inadequate legal remedy and entirely lacking in the elements of due process of law required for that purpose.

Thus each of said suits presents the very same constitutional questions that are involved in the above entitled suit, as well as the right of these concerns to contest such constitutionality by suit in equity, in view of the exceptional circumstances presented by the novel provisions of the AAA and the inadequacy of, and lack of due process in, the procedure by claim for refund under the said limitations thereon.

II.

Unconstitutionality of AAA as amended.

These amici curiae, with the required consents, have filed in this Court in the case of *United States*

* Public No. 320, 74th Congress, approved August 24th, 1935, for brevity in this brief called "the 1935 Amendments".

of America, Petitioner v. *William M. Butler and others, Receivers of Hoosac Mills Corporation, Respondents,* No. 401 of the October Term, 1935, a brief dealing with the questions presented in that case as to AAA but which did not include a consideration of the remedies of the processor.

Because the case in which that brief has been filed will be argued so shortly before the argument of the instant cases and it is therefore probable that it and the instant cases will be under consideration by this Court at the same time, to avoid duplication we respectfully refer the Court to that brief for a discussion of the constitutionality of the AAA.

Since the preparation of that brief an important discussion bearing on the general subject has come to our attention. It is "A Discourse on the Constitution and Government of the United States" by John C. Calhoun, prepared by him in 1848-9, left in manuscript at his death and published in 1851 under the editorship of Mr. Richard K. Cralle by "direction of the General Assembly of the State of South Carolina."

Calhoun has been incorrectly quoted as a supporter of the Hamilton theory because of his early leanings. In his speech in Congress on February 20, 1837:

> "Mr. Calhoun admitted that, when a young man and at his entrance upon political life, he had inclined to that interpretation of the Constitution which favored a latitude of powers; *but experienced observation and reflection had wrought a great change in his views; and above all, the transcendent argument of Mr. Madison himself in his celebrated Resolutions of 1798 had done more than all other things to convince him of his error.* The

> opposite course tended to a Government of unlimited powers * * *'' (25th Cong., 1st Sess., and The Works of John C. Calhoun (1857) III, 36, 41).

His Discourse on the Constitution amplifies and enforces this changed view and in so doing demonstrates the error of, opposition to, and evils from, the Hamilton theory.

Thus, referring in this Discourse to Hamilton's report on Manufactures, which is the well-known source of the claimed larger signification of the welfare clause, Calhoun says:

> "During the same Congress, a foundation was laid for other and great departures; the results of which, although not immediately developed, *have since led to the most serious evils.** I refer to the report of the Secretary of the Treasury on the subject of manufactures. He contended, not only that duties might be imposed to encourage manufacturers, but that it belonged (to use his own language) 'to the discretion of the national Legislature to pronounce upon the objects which concern the general welfare, and for which, under that description, an appropriation of money is requisite and proper. And there seems to be no doubt, that whatever concerns the general interests of agriculture, of manufactures and of commerce, is within the sphere of the national councils, as far as regards an application of money.' *It is a bold and an unauthorized assumption,* that Congress has the power to pronounce what objects belong, and what do not belong to the general welfare; and to appropriate money, at its discretion, to such as it may deem to belong to it.

* Italics ours, unless otherwise noted.

No such power is delegated to it;—nor is any such necessary and proper to carry into execution those which are delegated. On the contrary, to pronounce on the general welfare of the States is a high constitutional power, appertaining not to Congress, but to the people of the several States, acting in their sovereign capacity. *That duty they performed in ordaining and establishing the constitution. This pronounced to what limits the general welfare extended, and beyond which it did not extend.* All within them, appertained to the general welfare, and all without them, to the particular welfare of the respective States. The money power, including both the taxing and appropriating powers, and all other powers of the federal government are restricted to these limits. *To prove, then, that any particular object belongs to the general welfare of the States of the Union, it is necessary to show that it is included in some one of the delegated powers, or is necessary and proper to carry some one of them into effect,—before a tax can be laid or money appropriated to effect it. For Congress, then, to undertake to pronounce what does, or what does not belong to the general welfare,—without regard to the extent of the delegated powers,—is to usurp the highest authority;—one belonging exclusively to the people of the several States in their sovereign capacity"* (pp. 349-51).

In addition to thus forcefully repudiating the Hamilton theory, because of its violation of Constitutional principles, Calhoun definitely adopts the Madison theory as expressed by him in his Report on the Virginia Resolutions, from which we quoted on

pages 42-3 of our brief. Referring to this report, Calhoun says:

> "At the next session of the General Assembly of Virginia, these resolutions were referred to a committee, of which Mr. Madison was the chairman. The result was a report from his pen, which triumphantly vindicated and established the positions taken in the resolutions. * * * *It conclusively refutes the position, taken by Gen. Hamilton, that it belongs to the discretion of the national legislature to pronounce upon objects, which concern the general welfare, as far as it regards the application of money, already quoted;* denies the right of Congress to use the fiscal power, either in imposing taxes, or appropriating money, to promote any objects but those specified in the constitution;—shows that the effect of the right, for which he contends, would necessarily be consolidation,—by superseding the sovereignty of the States and extending the power of the federal government to all cases whatsoever; and that, the effect of consolidation would be to transform our federal system into a monarchy" (pp. 356-8).
>
> "The report of Mr. Madison, and the Virginia and Kentucky resolutions, constituted the political creed of the State rights republican party. They were understood as being in full accord with Mr. Jefferson's opinion, who was its acknowledged head. They made a plain and direct issue with the principles and policy maintained by Gen. Hamilton,—who, although not nominally the head of the federal party, as they called themselves, was its soul and spirit. The ensuing presidential election was contested on this issue, and terminated in the defeat of Mr. Adams, the election of Mr. Jefferson as President, and the elevation of the republican party

> into power. To the principles and doctrines, so plainly and ably set forth in their creed, they owed their elevation, and the long retention of power under many and severe trials. *They secured the confidence of the people, because they were in accord with what they believed to be the true character of the constitution, and of our federal system of government*" (pp. 358-9).

He then traces the operation of the unlimited Hamilton theory, showing its political and economic evils through the years of his experience, and concludes that among the steps to confine the Federal Government within its just powers "one of the most important will be, the repeal of all acts by which the money power is carried beyond its constitutional limits, either in laying duties or in making appropriations", because

> of all the powers ever claimed for the government of the United States, that which invests Congress with the right to determine what objects belong to the general welfare,—to use the money power in the form of laying duties and taxes, and to make appropriations for the purpose of promoting such as it may deem to be of this character, is the most encroaching and comprehensive. In civilized communities money may be said to be the universal means, by which all the operations of governments are carried on. If, then, it be admitted, that the government of the United States has the right to decide, at its discretion, what is, and what is not for the common good of the country, and to lay duties and taxes, and to appropriate their proceeds to effect whatever it may determine to be for the common good, it would be difficult to assign any limits to its authority, or to pre-

vent it from absorbing, finally, all the reserved powers, and thereby, destroying its federal character" (pp. 384-5).

The solution, of course, is an adherence to the cardinal principle that the "end" sought to be accomplished must be both "legitimate" and "within the scope of the Constitution", which this Court has applied as the test of the revenue, as well as of the other, powers as we have already shown in our brief in the *Hoosac Mills* case (p. 37).

In the *Passenger* cases in 1849 (7 How. at 446-7) Mr. Justice Catron said:

> "*Nor has Congress power to lay taxes to pay the debts of a State, nor to provide by taxation for its general welfare.* Congress may tax for the treasury of the Union, and here its power ends."

So in 1869, in *Veazie Bank* v. *Fenno* (8 Wall. at 541) this Court said of the Federal taxing power:

> "There are, indeed, certain virtual limitations, arising from the principles of the Constitution itself. It would undoubtedly be an abuse of the power if so exercised as to impair the separate existence and independent self-government of the States, or *if exercised for ends inconsistent with the limited grants of power in the Constitution.*"

And in the *Child Labor* case (259 U. S. 20), the Court quoted with approval (p. 41) the quotation last above made and held that a tax imposed to regulate child labor in factories was unconstitutional, because:

> "This case requires as did the *Dagenhart*

case the application of the principle announced by the Chief Justice Marshall in *McCulloch* v. *Maryland,* 4 Wheat. 316, 423, in a much quoted passage:

> " 'Should Congress, in the execution of its powers, adopt measures which are prohibited by the Constitution; or should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not intrusted to the government; it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say, that such an act was not the law of the land' " (pp. 39-40).

III.

The novel and drastic limitations imposed by the 1935 amendments on claims for refund of taxes paid under AAA make it an inadequate remedy, totally lacking in due process of law. It is but a scheme on the part of the Government to get and keep unconstitutional exactions under AAA in fraud of the rights of the taxpayer.

For years there has existed with respect to federal taxation a system of collection, which came to be embodied in the well-known Secs. 3220, 3224, 3226 and 3228, as amended, of the Revised Statutes, whereby payment of the tax was made and questions with respect to it were judicially ascertained and determined upon a claim for refund filed by the taxpayer. For this purpose these sections provided that: "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court" (Sec. 3224) and that:

> "No suit or proceeding shall be maintained in any court for the recovery of any internal-

> revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenues, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof" (Sec. 3226).

This system of tax collection has been upheld on the "underlying principle" that:

> "Where only property rights are involved, mere postponement of the judicial inquiry is not a denial of due process if the opportunity given for the ultimate judicial determination of the liability is adequate" (*Phillips* v. *Commissioner,* 283 U. S. at 595-7),

which on the one hand prevented the Government from being embarrassed in its needs for revenue and on the other hand accorded to the taxpayer the due process of law required by the Fifth Amendment (*Louisville Joint Stock Land Bank* v. *Radford,* 295 U. S. at 589, and cases cited in Note 19 thereto).

An examination of these sections will show that this system of tax collection met the required conformity to due process of law through the two following essential characteristics:

(1) They have not restricted the taxpayer in the reasons he might urge of fact or law as ground for refund in whole or in part;

(2) They have in no way allowed the United States to retain, in whole or in part, any taxes it had wrong-

fully, in fact or law, exacted, unless the taxpayer had slept on his rights so that they became barred by the statutes of limitation.

Differing radically from these sections and the equitable and constitutional principles on which they have proceeded and been sustained, Sec. 21 (added by Sec. 30 of the 1935 Amendments) for the first time in the history of this country undertakes to impose on this system of tax collection as a component part of AAA limitations by which the Government endeavors to get and keep unconstitutional exactions in the name of taxation under said act. This statement is demonstrated by the following brief analysis of these provisions:

In the first place, Sec. 9(a), both now and heretofore, levies the tax "upon the first domestic processing" and requires that it "shall be paid by the processor". The processor is thereby made the taxpayer. He alone may file claim for refund. There is no provision whereby anyone else may file a claim for refund or whereby the processor may file a claim for anyone else, even though he may refund or give bond to refund to his vendee or passee. *Accordingly, whatever under these limitations a processor may not recover for his own benefit by claim for refund the United States will retain in its Treasury, though unconstitutionally collected.*

In the second place, by Sec. 21(d)(1) there may be no recovery or set-off of "*any* amount of *any* tax, penalty or interest, which accrued before, on or after" the adoption of the 1935 Amendments, *unless* through claim for refund the Commissioner be satisfied, in addition to all other facts, and so certifies of record, that the processor has not, among other things,

"*directly or indirectly* included such amount in the price of the article * * * or passed on *any part* of such amount to the vendee or any other person *in any manner*".*

The Agricultural Adjustment Administration in its Bulletin of August 30th, 1935, entitled "Detailed Outline of AAA Amendments", commenting on Sec. 21(d)(1), says on page 5 that a recovery through claim for refund

> "*will be allowed only* when the plaintiff satisfies the Commissioner of Internal Revenue that he has not (a) included the tax in the price of the article, *or* (*b*) *passed any part of it on to the buyer,* or (c) included any part of it in the charge or fee for processing, or (d) paid a reduced price for the article because of the tax. Provision is made for court review of the Commissioner's determination on the basis of the record made before him."

---

* Sec. 21(d)(1) provides: No recovery, recoupment, set-off, refund or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of section 317 of the Tariff Act of 1930.

We do not see how any other interpretation can be given the provision under the well-known rule that:

> "We must construe the law and interpret the intent and meaning of Congress from the language of the act. The words are to be given their ordinary meaning unless the context shows that they are differently used" (*Child Labor Case*, 259 U. S. at 36).

The words used are all-embracing—as comprehensive as the English language affords—and undoubtedly have, and were intended to have, the following consequences:

(1) The processor may not recover what he has included in the price of the article or passed on to his vendee or any other person, and so the tax to that extent remains in the Treasury of the United States under these provisions, though unconstitutionally collected.

(2) The processor may not recover "*any* amount of *any* tax" if he has "passed on *any part* of such amount" to his vendee or any other person "in any manner". It does not say, as it easily might have, that no recovery may be had of "that portion of any tax" which the Commissioner finds the processor may have passed on. On the contrary, it expressly prohibits the processor from recovering "*any* amount of *any* tax, penalty or interest" unless he satisfies the Commissioner that he has not "directly or indirectly * * * passed on *any part* of *such amount* to the vendee or to any other person in any manner". Words could not be plainer—passing on part forfeits the whole—*else to what purpose were the words "any*

part" used? The "passing on" is treated apparently as a quasi-criminal act and indulgence therein, *to no matter how limited an extent,* exposes him to an escheat of his property.

The history of the Act confirms this construction. It shows (see H. R. Conf. Rep. in Appendix), the House Bill prohibiting all recovery of taxes theretofore paid and not reduced to final judgment, while allowing the recovery of future payments, though collected in the sale, by refunding or obtaining the customer's consent, followed by Amendments in the Senate that relieved past payments of this prohibition, but forbade recovery of what had been included in the price or collected from the producer, except upon refund, with the Amendment as adopted not only totally preventing recovery of what had been "passed" on or back in any manner, though refunded, but also forfeiting the whole for so passing on or back a part, and making the record before the Commissioner the Court record so as to preclude judicial re-examination.

In the third place, as a practical proposition, it will be impossible, except in a most unusual case, for the processor to bear the burden which Sec. 21(d)(1) places on him of satisfying the Commissioner that he has not thus included or passed on the whole or a part of the tax to his vendee or some other person.

These provisions were intended to have this preclusive effect. Congress was actuated by that motive, as witness the history of the act given in the appendix. The broad words "directly or indirectly", "in any manner" compel that result, because they admit of no possible exception and mere failure of the proof to satisfy the Commissioner prevents the processor from recovering, since the burden of proof is on him (*Burnet* v. *Houston,* 283 U. S. at 227-8).

Indeed, going further than ever before, the section requires that the hearing before the Commissioner for this purpose shall by him be "certified and filed as the record in the case, and shall be so considered by the Court"—thus preventing that essential full judicial re-examination heretofore afforded the taxpayer (*U. S.* v. *Jefferson Co.,* 291 U. S. at 397-9).

We are not dealing with a sales tax added to the invoice price, but with a tax on the act of processing, an excise tax, which enters into the cost of the article (*Liggett & M. Co.* v. *U. S.* [C. C. A. 3rd] 77 F. (2d) at 67; *Cornell* v. *Coyne,* 192 U. S. 418) and brings the case squarely within this statement of this Court in *Lash's Products Co.* v. *U. S.* (278 U. S. at 176):

> "The phrase 'passed the tax on' is inaccurate, as obviously the tax is laid and remains on the manufacturer, and on him alone. * * * The purchaser does not pay the tax. He pays, or may pay, the seller more for the goods because of the seller's obligation, but that is all. * * * The price is the total sum paid for the goods. The amount added because of the tax is paid to get the goods and for nothing else. Therefore, it is part of the price * * *."

It needs no elaboration, but only a moment's consideration of the processing of hogs, cattle, rice, wheat, cotton, tobacco, which are bought at such different times and prices, and result in such different products through separation or blending, to make one realize the utter impossibility of satisfying the Commissioner that such a tax on the act of processing has not been included in the price or passed on in some manner.

Take packing for example: the stock has various

qualities, is bought at various times, under various conditions but in a highly competitive market. Therefrom more than 170 different products are derived, by differing processes for differing purposes, but all sold months thereafter in highly competitive markets. Into the manufacture enter products not subject to the processing tax.

Manifestly, whether or not the tax has been passed on must be ascertained with respect to each such sale of each article, and not from the result of the business as a whole, either for a week, a month, or a year. Yet the tax is not upon the selling price, but upon the processing, so that it is not added to the invoice, has no relation to the selling price, but enters into the cost of the various resulting products, as do other taxes, labor, rent, raw material, and overhead. Even with respect to a sales tax, considered in *United States* v. *Jefferson Co.* (291 U. S. 386), there is great difficulty. Though it seemed to this Court in that case, from the nature of the tax, that if the taxpayer has borne the burden "he can readily show it" (291 U. S. at 402), yet thereafter, on substantially the same facts, the Court of Claims denied recovery to the taxpayer (*Jefferson Co.* v. *U. S.,* 10 F. Supp. 950) and the District Court of Connecticut allowed a recovery to the taxpayer (*Am. Chain Co.* v. *Hartford,* 11 F. Supp. 770).

In *Shenandoah Milling Co.* v. *Early,* Paul, *D. J.,* said in his opinion of September 23rd, 1935 (3 U. S. L. W. Index 119):

> "The conditions imposed by the Amendments are practically impossible to perform. Ordinary millers scattered all over the country are buying wheat in surrounding communities at varying prices from day to day. That

> varying price is not reflected in the selling price of the product made from that wheat. That varying price is not reflected and cannot be reflected in the particular product that comes from the wheat, and it would be an impossibility for any miller to produce any records to show that no part of the processing tax paid was reflected in the reduced price to the producer or reflected in an increased price to the consumer. It could not be done."

In *Armour & Co.* v. *Harrison* (N. D. Ill., August 1st, 1935) Barnes, *D. J.*, said: "For the life of me I cannot figure out how a processor, assuming that he sells the pork and sells it for more than the amount of the processing tax, would ever be able to prove he did not pass on the tax."

In *Baltic Mills Co.* v. *Bitgood* (D. C. Conn., August 28th, 1935) Hincks, *D. J.*, said: "If on the other hand the processor, through sales at a legitimate profit, subjects himself to a suspicion that he has passed on the tax, he will be wholly without evidence to prove the contrary. In short, a processor who sells for the best price he can obtain won't know and can't know himself whether he has absorbed the tax or passed it on" (3 U. S. L. W. Index 84).

See, also, opinion of Otis, D. J., in *Larabee Flour Mills Co.* v. *Nee,* of October 3rd, 1935 (3 U. S. L. W. Index 65).

Can the United States thus get and keep invalid tax exactions through the medium of such limitations on the rights and remedies of those whose property will thus be taken?

It seeks to do so on two grounds, which will now

be considered, and can be characterized only as dishonest circumventions of the just constitutional rights of the people.

As the first ground, the Government baldly asserts a superior right to such tax collections, though invalid, as between itself and its citizens. It says:

> "When the tax is paid, it is generally passed on to the first and subsequent purchasers. Since the ultimate consumer is not in a position to recover, should the tax be held unconstitutional, there would be in this instance a receipt by the Government of invalid taxes. * * * As between the Government and a taxpayer or his purchaser, it is equitable for the Government to have the advantage of the tax payment. The situation may perhaps be likened by way of analogy to the doctrine of escheat" (p. 16 of Brief for the Government on Petition of the Rice Millers for certiorari).

So far as equitable considerations are concerned, this argument has been answered by this Court in no uncertain terms by its declaration in *Bull* v. *United States* (295 U. S. at 260-1) that the retention by the United States of taxes wrongfully collected is "against morality and conscience * * * and amounts in law to a fraud on the taxpayer's rights". See, also, *Moore Ice Cream Co.* v. *Rose,* 289 U. S. at 378-9, and *United States* v. *Emery,* 237 U. S. at 32.

Judge Otis said of this contention in his opinion of October 3rd, 1935 in the *Larabee Flour Mills Co.* case (3 U. S. L. W. Index 65):

> "The taxpayer has a right to include the amount to be taxed, or a part of it, in the price of his products even before he has actually paid

> the tax. Also, he can maintain an action in equity to enjoin the collection of the tax without proving that he has not included or will not include it, or a part of it, in the price of the commodities he manufactures. The funds from which he will pay the tax are his funds and not the less so because they may be replenished by the sale of his products to others. He has been damaged when his money has unlawfully been taken from him and not the less so because he may make himself whole through the consummation of some contract not with the wrongdoer, but with some third person."

And Judge Paul said in his opinion of September 3rd, 1935, in the *Shenandoah Milling Co. Case* (3 U. S. L. W. Index 119):

> "The court is not impressed by the argument that the Government should not be compelled to pay the taxpayer anything except what he himself can show he has paid. That position is that the Government wants to keep money it has illegally collected from some one else because that other person can not show where he got it. The equities of the Government are not above the equities of the citizen."

This question was not presented in *White* v. *Stone* (C. C. A. 1st), 78 F. (2d) 136; *Champ Spring Co.* v. *United States* (C. C. A. 8th), 47 F. (2d) 1; *Standard Oil Co.* v. *United States,* 5 F. Supp. 976, which the Government sometimes cites in support of its position. In them the Government was not seeking to retain an invalid tax regardless of the rights of the citizens.

To the extent the whole tax is forfeited for passing on a part, the net result of the limitations is the infliction of a penalty on the processor to the extent

he has not passed on the tax. (*Lipke* v. *Lederer,* 259 U. S. at 561-2; *Regal Drug Corp.* v. *Wardell,* 260 U. S. at 391-2.)

So far as constitutional considerations are concerned, such a position on the part of the Government is a rank perversion of the "underlying principle" upon which the system of tax collection, by payment and claim for refund, has been sustained. For this principle is that the system is a *"mere postponement of the judicial inquiry"* and therefore "not a denial of due process of law, if the opportunity given for the ultimate judicial determination of the liability is adequate" (*Phillips* v. *Commissioner,* 283 U. S. at 596-7). Yet if the limitations be sustained payment is not "a mere postponement of the judicial inquiry" but a deprivation of all right in the taxpayer to question the validity of the tax and merely because, forsooth, he has done the necessary and expected thing, to protect his business, of passing the tax on, although had not the collection system required payment and the Government was proceeding as plaintiff against him for the collection of the tax (which in substance it really is notwithstanding the form of the procedure—see *Bull* v. *United States,* 295 U. S. at 259-60) it could recover only if the tax were validly imposed, without any regard being paid to whether the taxpayer had passed on, or could pass on, the tax.

While the nature of the tax and of the act of processing make it impossible here, as in a great many other cases (see *Indian Motor Cycle Co.* v. *U. S.,* 283 U. S. at 581-2 and notes 1 and 2), for the taxpayer to say with any certainty or definiteness whether he has or has not passed on the tax or any

part thereof, we think we should point out, as a matter of principle, just where the Government's theory will take us. *Rights of the people respecting taxation will indeed be a dead letter if any such doctrine should ever be established as that they could not question the tax if they had passed it on and those who thus bore it could not question the tax because they were not the taxpayers.* That idea is utterly new and correspondingly unjust and a deprivation of property without due process of law—confiscation.

Counsel for the Government cite *United States* v. *Jefferson Co.* (291 U. S. 386) as authority for their position. But it is completely inapposite. It merely held Sec. 424 of the Revenue Act of 1928 not to be a violation of the principle which we invoke, by reason of the simple requirement "that it be shown or made certain that the money when refunded will go to the one who has borne the burden of the illegal tax and therefore is entitled in justice and good conscience to such relief" (291 U. S. at 401-2). The section expressly authorized the plaintiff to recover *the whole amount paid by him to the United States,* not only for himself to the extent he had absorbed or refunded the tax, but also the residue for the benefit of his customer by giving bond for such refunding.* It is

* Sec. 424 provides: No refund shall be made of any amount paid by or collected from any manufacturer, producer, or importer in respect of the tax imposed by subdivision (3) of section 600 of the Revenue Act of 1924, or subdivision (3) of section 900 of the Revenue Act of 1921 or of the Revenue Act of 1918, unless either—(1) Pursuant to a judgment of a court in an action duly begun prior to April 30, 1928; or (2) It is established to the satisfaction of the Commissioner that such amount was in excess of the amount properly payable upon the sale or lease of an article subject to tax, or that such amount was not collected, directly or indirectly from the purchaser or lessee, or that such amount, although collected from the purchaser or lessee, was returned to him; or (3) The Commissioner certifies to the proper disbursing officer that such manufacturer, producer, or importer has filed with the Commissioner, under regulations prescribed by the Commissioner with the approval of the Secretary, a bond in such sum and with such sureties as the Commissioner deems necessary, conditioned upon the immediate re-

a far cry from the equitable provisions of such a section to the limitations of the 1935 Amendments which allow retention of invalid taxes by the United States. The ruling gives no support to such a result, the case did not present that issue.

And of course, the *Jefferson* case had to do with a sales tax added to the invoice at the time of sale of which the vendor was but a collector and paid only as collections were made, while here the tax is on the processing, enters into cost and is paid by the processor regardless of the price or time of his sales, or even of their occurring.

Escheats furnish no analogy. The doctrine of escheat, as now applied, relates only to the definite failure of heirs. There was a time when property became thus forfeited as a penalty for crime; but surely, counsel for the government have no intention of placing a taxpayer in that category! On the contrary the Government is a trustee *ex maleficio,* just as an individual would be (See *United States* v. *State Natl. Bank,* 96 U. S. at 35-6, approved in *Bull* v. *United States,* 295 U. S. at 260-3).

As the second ground, the Government baldly asserts its superiority to the due process clause of the Fifth Amendment. It says:

> "The constitutional basis for such a provision is found in the power of the United States at any time to assert its sovereign right not to

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payment to the United States of such portion of the amount refunded as is not distributed by such manufacturer, producer, or importer, within six months after the date of the payment of the refund, to the persons who purchased for purposes of consumption (whether from such manufacturer, producer, importer, or from any other person) the articles in respect of which the refund is made, as evidenced by the affidavits (in such form and containing such statements as the Commissioner may prescribe) of such purchasers, and that such bond, in the case of a claim allowed after February 28, 1927, was filed before the allowance of the claim by the Commissioner:

be sued and the power of Congress to determine the jurisdiction of the courts" (pp. 22-3 of the Senate Report and 23 of the House Report, accompanying the Bill).

To sustain this argument reference is made by counsel for the Government to the cases (1) holding that Congress may restrict or remove the jurisdiction of the inferior Federal Courts, so far as suits between private litigants are concerned (*Kline* v. *Burke Construction Co.*, 260 U. S. 226, 234) which, of course, are irrelevant and (2) sustaining exertions of the authority of Congress under the Constitution over importations and immigration, and thereby of acts and regulations in respect of duties and customs (*Cary* v. *Curtis*, 3 How. 236; *Head Money Cases*, 112 U. S. at 591-6; *Fong Yue Ting* v. *United States*, 149 U. S. at 714-5) which are entirely inapplicable because of the plenary power of Congress over foreign commerce. See *University of Illinois* v. *United States* (289 U. S. at 58-60) and *Buttfield* v. *Stranahan* (192 U. S. at 492-3), in which latter this Court said:

> "The power to regulate commerce with foreign nations is expressly conferred upon Congress, and being an enumerated power is complete in itself, acknowledging no limitations other than those prescribed in the Constitution. *Lottery Case* 188 U. S. 321, 353-6; *Leisy* v. *Hardin*, 135 U. S. 100, 108. Whatever difference of opinion, if any, may have existed or does exist concerning the limitations of the power, resulting from other provisions of the Constitution, so far as interstate commerce is concerned, it is not to be doubted that from the beginning Congress has exercised a plenary power in respect to the exclusion of merchandise brought from foreign countries; not alone

> directly by the enactment of embargo statutes, but indirectly as a necessary result of provisions contained in tariff legislation. It has also, in other than tariff legislation, exerted a police power over foreign commerce by provisions which in and of themselves amounted to the assertion of the right to exclude merchandise at discretion."

As a matter of fact, *the sovereignty of the United States is in nowise involved. It cannot assert that status to retain property wrongfully acquired* (*United States* v. *The State National Bank,* 96 U. S. 30, 35-6). *This doctrine was expressly applied by this court in Bull* v. *United States* (295 U. S. at 260-1), *to taxes wrongfully collected,* where it approved for this purpose the cited case and the statement of this court therein that:

> "In these cases, and many others that might be cited, the *rules of law applicable to individuals were applied to the United States.* Here the basis of the liability insisted upon is an implied contract by which they might well become bound in virtue of *their corporate character. Their sovereignty is in nowise involved.*"

But beyond this, such taxation, of course, is subject in all respects to the due process clause of the Fifth Amendment (*Louisville Joint Stock Land Bank* v. *Radford,* 295 U. S. 589, and cases cited in Note 19 thereto), which for this purpose has the very same meaning as the due process clause in the Fourteenth Amendment (*Heiner* v. *Donnan,* 285 U. S. at 326), thus making applicable the various decisions of this Court with respect to State taxation, so that on the principles here involved they may be likewise cited.

While the form of the remedy accorded the taxpayer may be changed, as was done when the system of tax collection embodied in the Revised Statutes was inaugurated, it must preserve the essential elements of due process of law because the United States cannot, any more than a State, and for the same reason, "make anything due process of law which by its own legislation it chooses to declare such" (*Davidson* v. *Bd. of Administrators,* 96 U. S. at 102).

Heretofore this system of taxation has conformed to this principle because it merely postponed the judicial determination, reserving an adequate remedy for that purpose (*Phillips* v. *Commissioner,* 283 U. S. at 595-7)—a remedy which we have seen paid no attention whatever to whether or not the taxpayer had passed on the tax, but regardless of that fact allowed the taxpayer to urge any point of law or fact in his questioning of the tax and did not allow the United States to retain any part of an invalid tax.

The limitations imposed in this respect by the 1935 Amendments are squarely in conflict with this underlying principle, in that they take away from the taxpayer all remedy to recover payments it may have made, although those payments constitute invalid tax exactions, and thereby work confiscation of its property. This is exactly what the due process clause was intended to prevent. It is a limitation for this purpose on the sovereignty of the United States and thereby forbids acquisition by legislative fiat, else in vain was it included in the Fifth Amendment to the Constitution (*Monongahela Navigation Co.* v. *United States,* 148 U. S. at 336-7).

In *Graham* v. *Goodcell* (282 U. S. at 430-1) this Court said:

"Having reached this conclusion, it is not

necessary to consider the authority of the Congress to withdraw the consent of the United States to be sued. See *United States* v. *Heinszen*, 206 U. S. 391, 51 L. ed. 1106, 27 S. Ct. 742, 11 Ann. Cas. 688, *supra*. *The argument of the government in this respect is not adequate to dispose of the controversy. Some of the present suits were brought against the collector individually and were based upon the right to recover as against him by reason of his illegal acts. Such an action is personal, and not against the United States.* *Sage* v. *United States*, 250 U. S. 33, 37, 63 L. ed. 828, 830, 39 S. Ct. 415; *Smietanka* v. *Indiana Steel Co.*, 257 U. S. 1, 4, 5, 66 L. ed. 99, 100, 101, 42 S. Ct. 1. *If the Congress did not have the authority to deal by a curative statute with the taxpayers' asserted substantive right, in the circumstances described, it could not be concluded that the Congress could accomplish the same result by denying to the taxpayers all remedy both as against the United States and also as against the one who committed the wrong.* See *Brinkerhoff-Faris Trust & Sav. Co.* v. *Hill*, 281 U. S. 673, 679, 680, 74 L. ed. 1107, 1112, 1113, 50 S. Ct. 451."

In *Helvering* v. *City Bank Farmers Trust Co.*, decided November 11, 1935—a federal tax case—this Court said:

"The test of validity in respect of due process of law is whether the means adopted is appropriate to the end. A legislative declaration that a status of the taxpayer's creation shall, in the application of the tax, be deemed the equivalent of another status falling normally within the scope of the taxing power, if reasonably requisite to prevent evasion, does not take

> property without due process. But if the means are unnecessary or inappropriate to the proposed end, *are unreasonably harsh or oppressive,* when viewed in the light of the expected benefit, *or arbitrarily ignore recognized rights to enjoy or to convey individual property,* the guarantee of due process is infringed."

In *Ohio Oil Co.* v. *Conway* (279 U. S. at 815) this Court granted an application for an interlocutory injunction with respect to a State tax because:

> "If the tax be paid during the pendency of the suit, and the statute be adjudged invalid by the final decree, the plaintiff will be remediless. The laws of the State afford no remedy whereby restitution of the money so paid may be enforced, even where the payment is under both protest and compulsion."

Other pertinent cases illustrating and upholding the principle involved are: *Chicago, B. & Q. R. Co.* v. *Chicago,* 166 U. S. at 233-9; *League* v. *Texas,* 184 U. S. at 158-9; *Ettor* v. *Tacoma,* 228 U. S. at 155-6; *Hebert* v. *Louisiana,* 272 U. S. at 316-7; *Atlantic Co.* v. *Daughton,* 262 U. S. at 426; *Brinkerhoff-Faris Co.* v. *Hill,* 281 U. S. at 679, 680.

The attempted limitations imposed by the act at bar on the taxpayer's right even go so far as an endeavor to confine his remedy to a determination by the Commissioner of Internal Revenue—a political appointee at the head of the Government's collection bureau, whose status on that account was found to be so entirely out of harmony with such a task, as to demand the creation of the Board of Tax Appeals (see *Old Colony Trust Co.* v. *Commissioner,* 279 U. S. at

721). The requirement of the Act in this respect is not only that the proof shall be to the satisfaction of the Commissioner, which would leave the matter open for complete judicial re-examination,—see *United States* v. *Jefferson Co.* (291 U. S. at 397-9). It goes further, and provides:

> "In any judicial proceeding relating to such claim a transcript of the hearing before the Commissioner shall be duly certified and filed as *the* record in the case, and *shall be so considered by the Court.*"

The intent of this provision to change the judicial re-examination heretofore accorded the taxpayer into a mere judicial review of this record, notwithstanding the constitutional questions involved, is plain and fully declared in the House Conference Report which is given in the appendix and declares that "no trial *de novo* on the facts by the court is provided for * * * nor can judicial proceedings be brought in the absence of the prior administrative hearing and record" and that the "provision applies to suits against the collector as well as against the United States and applies if the issue comes up in connection with any other suit involving the United States or the collector and the claimant."

Manifestly such an administrative official will not attempt to pass on the constitutional questions involved here. He will not allow the taxpayer any recovery for the taxes he may have included or passed on. He should, and probably will, because he will consider himself bound by the terms of the Act, refuse to allow a recovery of any tax where part of it has been passed on. And under the circumstances he will certainly resolve against the taxpayer any doubt as

to such inclusion or passing on, which doubt, as we have seen, the record may be expected to provide, because of the nature of the tax and the businesses involved. It is clear, therefore, from these considerations, that the claim for refund under these limitations does not furnish that plain, practical, efficient procedure necessary to constitute an adequate remedy at law (*Boyce's Executors* v. *Grundy,* 3 Pet. at 215; *Walla Walla* v. *Walla Walla Water Co.,* 172 U. S. at 12; *Davis* v. *Wakelee,* 156 U. S. at 688; *Union P. R. Co.* v. *Weld,* 247 U. S. at 285-6).

But beyond this, the substitution of a review of the record made before the Commissioner for the judicial re-examination heretofore accorded the taxpayer is, in substance, a negation of that judicial ascertainment and determination which the due process clause affords and which has been sedulously safeguarded by this Court under a variety of circumstances:

One set of such circumstances is the underlying principle upon which we have seen the system of collection by payment and claim for refund has been sustained (*Phillips* v. *Commissioner,* 283 U. S. at 585-9).

Another set of circumstances is the Longshoremen's and Workers' Act and its fixing of compensation (*Crowell* v. *Benson,* 285 U. S. at 45-9).

Another set of such circumstances is the decisions of this Court with respect to rates fixed by utility commissions for public utilities (*Prentis* v. *Atlantic Coast Line Co.,* 211 U. S. at 227-8; *State Corporation Comm.* v. *Wichita Gas Co.,* 290 U. S. at 569).

The Courts have exercised such right of ascertainment and determination with respect to such admin-

istrative tribunals as the Federal Trade Commission and the Board of Tax Appeals. See: *Fed. Trade Comm.* v. *Curtis Pub. Co.*, 260 U. S. at 580; *Fed. Trade Comm.* v. *Eastman Co.*, 274 U. S. at 619; and *Helvering* v. *Taylor*, 293 U. S. at 515-6.

The reason, of course, is that no record before an administrative official or tribunal can be binding on the judiciary so as to prevent it from performing its constitutional duty of ascertaining and determining for itself whether or not the citizen is being accorded his constitutional rights in a constitutional manner (*Truax* v. *Corrigan*, 257 U. S. at 324-5).

A most fitting commentary on what the Government is attempting through these limitations, and conclusive here, are the well-known words of Mr. Justice Davis in *Ex parte Milligan* (4 Wall. at 120-1) with respect to the principles embodied in the first ten Amendments:

> "Time has proven the discernment of our ancestors; for even these provisions, expressed in such plain English words, that it would seem the ingenuity of man could not evade them, are *now*, after the lapse of more than seventy years, sought to be avoided. Those great and good men foresaw that troublous times would arise, when rulers and people would become restive under restraint, *and seek by sharp and decisive measures to accomplish ends deemed just and proper; and that the principles of constitutional liberty would be in peril, unless established by irrepealable law.* The history of the world had taught them that what was done in the past might be attempted in the future. *The Constitution of the United States is a law for rulers and people, equally in war and in peace, and*

covers with the shield of its protection all classes of men, at all times, and under all circumstances."

IV.

The circumstances entitle the processors to injunctive relief in equity.

In *Miller* v. *Standard Nut Margarine Co.* (284 U. S. at 509-11) this Court very fully considered this subject and concluded:

> "Independently of, and in cases arising prior to the enactment of the provision (Act of March 2, 1867, 14 Stat. at L. 475, chap. 169) which became Rev. Stat. Sec. 3224, U. S. C. title 26, Sec. 154, this court in harmony with the rule generally followed in courts of equity held that a suit will not lie to restrain the collection of a tax upon the sole ground of its illegality. The principal reason is that, as courts are without authority to apportion or equalize taxes or to make assessments, such suits would enable those liable for taxes in some amount to delay payment or possibly to escape their lawful burden and so to interfere with and thwart the collection of revenues for the support of the government.
>
> "And this court likewise recognizes the rule that, in cases where complainant shows that *in addition to the illegality of an exaction in the guise of a tax there exist special and extraordinary circumstances sufficient to bring the case within some acknowledged head of equity jurisprudence,* a suit may be maintained to enjoin the collector, *Dows* v. *Chicago,* 11 Wall. 108, 20 L. ed. 65; *Hannewinkle* v. *Georgetown,* 15 Wall.

547, 21 L. ed. 231; *State R. Tax Cases,* 92 U. S. 575, 614, 23 L. ed. 669, 673.

"*Section 3224 is declaratory of the principle first mentioned and is to be construed as near as may be in harmony with it and the reasons upon which it rests. Cumberland Teleph. & Teleg. Co.* v. *Kelly,* 87 C. C. A. 268, 160 Fed. 316, 321, 15 Ann. Cas. 1210; *Baker* v. *Baker,* 13 Cal. 87, 95; *Bradley* v. *People,* 8 Colo. 599, 604, 9 Pac. 783; 2 Lewis's Sutherland, Stat. Constr. 2nd ed. Sec. 454. *The section does not refer specifically to the rule applicable to cases involving exceptional circumstances. The general words employed are not sufficient, and it would require specific language undoubtedly disclosing that purpose, to warrant the inference that Congress intended to abrogate that salutary and well established rule.*

"This court has given effect to Sec. 3224 in a number of cases. *Snyder* v. *Marks,* 109 U. S. 189, 191, 27 L. ed. 901, 902, 3 S. Ct. 157; *Dodge* v. *Osborn,* 240 U. S. 118, 121, 60 L. ed. 557, 559, 36 S. Ct. 275; *Dodge* v. *Brady,* 240 U. S. 122, 60 L. ed. 560, 36 Su. Ct. 277. It has never held the rule to be absolute, but has repeatedly indicated that extraordinary and exceptional circumstances render its provisions inapplicable. *Hill* v. *Wallace,* 259 U. S. 44, 62, 66 L. ed. 822, 827, 42 S. Ct. 453; *Dodge* v. *Osborn, supra* (240 U. S. 121, 60 L. ed. 559, 36 S. Ct. 275); *Dodge* v. *Brady,* 240 U. S. 122, 60 L. ed. 560, 36 S. Ct. 277, *supra. Cf. Graham* v. *DuPont,* 262 U. S. 234, 257, 67 L. ed. 965, 968, 43 S. Ct. 567; *Brushaber* v. *Union P. R. Co.,* 240 U. S. 1, 60 L. ed. 493, L. R. A. 1917D, 414, 36 S. Ct. 236, Ann. Cas. 1917B, 713."

We call particular attention to the portions we have italicized. For, just like Sec. 3224, these AAA amendments—Secs. 21(a), (d), (e), (f) and (g)—contain no reference specifically "to the rule applicable to cases involving exceptional circumstances" and therefore, under the quoted decisions, the general words employed in these amendments cannot be held "to warrant the inference that Congress intended to abrogate" the jurisdiction of equity in these exceptional cases, to warrant which "it would require specific language undoubtedly disclosing that purpose". This is all the more true since the amendments were passed in the light of the decision of the Supreme Court on this subject in the quoted case.*

Applying these principles, injunctive relief should be afforded here on the following grounds:

In the first place, to the extent these limitations prevent the processor from recovering "any amount of any tax", though absorbed by him, by reason of having passed on "any part of such amount", they inflict a penalty, to which Sec. 3224 and the like provisions of these limitations are inapplicable, and injunctive relief may be granted under *Lipke* v. *Lederer,* 259 U. S. 557, and *Regal Drug Corp.* v. *Wardell,* 260 U. S. 386.

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* Only Sec. 21(a) is relevant, and it simply provides: No suit, action, or proceeding (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (d) of this section, may be reserved in the court's order.

In the second place, these limitations of the 1935 Amendments on the claim for refund make it an utterly inadequate legal remedy, entirely lacking in due process of law. The direct and irreparable injury thereby done the processors already appears and is shown in detail hereinafter. This, of course, furnishes an established ground of equity jurisdiction. The reasons and authorities are those already given.

Squarely in point is *Union P. R. Co.* v. *Weld* (247 U. S. at 285-6) where this Court held:

> "And if the section has been so qualified and modified that the continued existence of the right originally conferred on the taxpayer is involved in uncertainty, an essential element of the requisite remedy at law is wanting; for, as this court has said: 'It is a settled principle of equity jurisprudence that, if the remedy at law be doubtful, a court of equity will not decline cognizance of the suit. * * * Where equity can give relief, plaintiff ought not to be compelled to speculate upon the chance of his obtaining relief at law.' *Davis* v. *Wakelee,* 156 U. S. 680, 688."

This is a leading authority which has been often followed. See: *Atlantic Co.* v. *Daughton,* 262 U. S. at 426; *Dawson* v. *Kentucky Co.,* 255 U. S. at 295-6; *Wallace* v. *Hines,* 253 U. S. at 67-8; and *Henrietta Mills* v. *Rutherford County,* 281 U. S. at 126-7.

Here the limitations of the 1935 Amendments have so qualified and modified the right originally conferred on the taxpayer by the well-known system of tax collection embodied in the Revised Statutes, and required by the Fifth Amendment, as that (even if passing on part does not forfeit the whole), in case

the processor is not able to bear the burden, impracticable by reason of the nature of the tax and the processing, of proving he has not included the tax in the price of the article or passed it on to his vendee, he is utterly without remedy to challenge or recover and no other one is accorded such remedy, although some other one has certainly borne the tax, if not the processor. In other words, there is total lack of remedy—pure confiscation—an utter disregard of the Fifth Amendment and the cases construing and applying it. See: *Brinkerhoff-Faris Co.* v. *Hill,* 281 U. S. at 679-82; *Graham* v. *Goodcell,* 282 U. S. at 430-1; *Phillips* v. *Commissioner,* 283 U. S. at 595-7; *Chicago Co.* v. *Chicago,* 166 U. S. at 235-7; *Ettor* v. *Tacoma,* 228 U. S. at 155; *Davidson* v. *Bd. of Administrators,* 96 U. S. at 102.

Indeed so far does the claim for refund under these limitations fall short of being an adequate remedy, conforming to due process of law, that it will have the consequence of perpetrating a fraud on the legal rights of the taxpayer which might in and of itself well afford sufficient ground for the injunctive relief of a Court of Equity.

Of course, legal fraud, actual or constructive, furnishes ample ground for such relief. This Court said in *Atkins* v. *Dick* (14 Pet. at 119):

> "If there be any one ground upon which a court of equity affords relief with more unvarying uniformity than on any other, it is an allegation of fraud, whether proven or admitted."

For application of this doctrine to taxation, see *Raymond* v. *Chicago Co.,* 207 U. S. at 37; *Wilson* v. *Illinois S. R. Co.,* 263 U. S. at 577; *Bohler* v. *Callaway,* 267 U. S. at 489.

That such consequence would result is manifest. This Court has authoritatively declared that retention by the United States of taxes wrongfully exacted *"amounts in law to a fraud on the taxpayer's rights"* and that it occupies thereto the same relation as an *individual with "its sovereignty in nowise involved"* (*Bull* v. *U. S.*, 259 U. S. at 260-1; *U. S.* v. *State Natl. Bank,* 96 U. S. at 35-6). Yet the purpose of these limitations is to accomplish that precise result through securing payment of the tax and then claiming that though the exaction be invalid the processor may not complain because he has passed on to his customer, and the customer may not complain because he is not the taxpayer.

Such is the *device,* enacted in these limitations, by which the United States is seeking to get and keep the property of its citizens, notwithstanding the invalidity of its exactions. There is no question that such is the scheme, the design, the intent, of these limitations. Their terms admit of no other conclusion. Indeed, counsel for the Government, in their brief in opposition to a petition for certiorari in these cases, went so far, as we have seen, as to contend that though the tax exactions be invalid "as between the Government and a taxpayer or his purchaser it is equitable for the Government to have the advantage of the tax payment".

Will the Government be allowed to force payments to itself under such a scheme, for such a purpose, with such a result? Can such technical considerations, so lacking in administrative justice, circumvent the constitutional rights of the citizens and accomplish such an object?

That is the essential question here—not who may eventually bear the burden of the illegal exactions. As well said by Judges Paul and Otis in their deci-

sions in the *Shenandoah* and *Larabee* cases from which we have already quoted, the Government has no right to "keep money it has illegally collected from someone else because that other person cannot show where he got it"; the taxpayer has been "damaged when his money has unlawfully been taken from him, and not the less so because he may make himself whole through the consummation of some contract, not with the wrongdoer, but with some third person".

Liability for the tax is upon the processor. It is his business that suffers from its burdens and risk. How he worked out the situation under the demoralized competitive conditions, in order to survive, is a matter of private concern between him and his customers (*Wayne County Produce Co.* v. *Duffy-Mott Co.*, 244 N. Y. 351), totally irrelevant to the essential question here, which is, we repeat, will the United States be allowed to get and keep invalid taxes in such a manner and for such a purpose. The circumstances are such as to forbid any exercise of the power of a court of equity to impose terms on the relief it grants (*Central K. N. G. Co.* v. *Railroad Commission*, 290 U. S. at 271). Had the Act expressly authorized the passing on, the processors could still maintain this suit and question the validity of the tax under the precedent of the suits by national banks for a like purpose as to the taxes on their shares which fall on their shareholders by reason of the liability for the tax, under pain of penalty and interest if the liability is not discharged.*

* See: *Cummings* v. *Merchants Natl. Bank*, 101 U. S. 153, 156; *Pelton* v. *The Bank*, 101 U. S. 143; *Hills* v. *Bank*, 105 U. S. 319; *Hannan* v. *First Natl. Bank* (C. C. A. 8th), 269 Fed. 527, 530; *Eddy* v. *First Natl. Bank* (C. C. A. 8th), 275 Fed. 550; *Crawford County Bank* v. *Crawford County* (C. C. A. 8th), 66 F. (2d) 971; *Toy Natl. Bank* v. *Nelson*, 38 F. (2d) 261; *Fourth Atlantic Bank* v. *City of Boston*, (C. C. A. 1st), 300 Fed. 29; and *McFarland* v. *Central Natl. Bank* (C. C. A. 8th), 26 F. (2d) 890, 891. State cases to the same effect are: *Mercantile Natl. Bank* v. *The Mayor*, 172 N. Y. 35, 44; *People ex rel. American E. N. Bank* v. *Purdy*, 196 N. Y. 270, 275-6, and cases cited; reaffirmed in 199 N. Y. 51; and *Second Natl. Bank* v. *City of New York*, 213 N. Y. 457, 462.

In the third place, the most unusual situation presents exceptional and extraordinary circumstances which entitle the processor to injunctive relief. There is the real magnitude of the constitutional questions involved, which in and of themselves are sufficient for this purpose (*Borden's Co.* v. *Baldwin,* 293 U. S. 194) since they have been declared by this Court to be as far-reaching and of as large importance as any that could be presented to it (*Fiela* v. *Clark,* 143 U. S. at 695). There is the impracticability of proving the required negative to the satisfaction of the Commissioner and meanwhile we have the tremendous financial consequences involved and the long, troublesome and expensive course which the processors of this country will have to pursue, should they be required to file claims for refund and seek to prove the extent to which they have or have not included or passed on the tax, or any part thereof, with the scope allowed to the Commissioner of Internal Revenue to examine their officers, employees and records for that purpose, and the burden on business from the uncertainty meanwhile. Why should these momentous issues be kept hanging like an incubus over business by confining processors to such a course, when without it, we think in obviation of it, they may be determined by a single suit in equity in a speedy and efficient manner? These circumstances, it seems to us, clearly bring such a suit within the principles of *Boyce's Executors* v. *Grundy* (3 Pet. at 215), as well as *Walla Walla* v. *Walla Walla Water Co.* (172 U. S. at 12), *Davis* v. *Wakelee* (156 U. S. at 688); *Union P. R. Co.* v. *Weld* (247 U. S. at 285-6); *Raymond* v. *Chicago Co.,* 207 U. S. 20, and *Wilson* v. *Illinois Co.,* 263 U. S. 574, which held that:

> "It is not enough that there is a remedy at law; it must be plain and adequate or, in other words, *as practical and as efficient to the ends*

of justice and its prompt administration as the remedy in equity."

It is of the essence that such momentous questions, having such far-reaching consequences, whose existence occasions such damage, doubt and vexation, should be disposed of in the most expeditious way consistent with orderly procedure; and here that, by far, is furnished through a suit in equity rather than by claims for refund from every aspect.

In the fourth place, and closely allied to the ground we have just stated, there is the multiplicity of claims for refund by processors, and actions based thereon, which a consideration and determination of these important questions in a single suit in equity will prevent. Already over a thousand suits in equity have been brought to enjoin the collection of the processing taxes. Processing taxes must be paid monthly (see provisions of Sec. 600 of the Revenue Act of 1926 and of Sec. 626 of the Revenue Act of 1932, made applicable by Sec. 19(b) of the AAA) by each of the processors of various agricultural commodities. One can readily realize, therefore, how many different claims for refund will have to be filed and considered, and consequent actions brought, with the delay, trouble and cost occasioned, since as respects each monthly payment by each processor it will be the duty of the Commissioner of Internal Revenue under these limitations to ascertain and decide whether any part of the tax so paid has been passed on by the processor.

On the other hand, the questions presented by a suit in equity by any processor, namely, the constitutionality of the AAA, as respects the imposition of the tax and the use of the revenues thereby raised, may be heard and determined in one case for all cases that might arise under the Act and amendments, without

any ascertainment as to whether or not the tax has been passed on in a particular case.

That prevention of a multiplicity of suits is a ground of equity jurisdiction was recognized in *Dows* v. *Chicago*, 11 Wall. 108, cited with approval in *Miller* v. *Standard Nut Margarine Co., supra.*

What constitutes a multiplicity of suits is illustrated by cases collected in a note at 76 L. ed. 455 to *Matthews* v. *Rodgers,* 284 U. S. 521. It shows by citation of a great many authorities that equity will take jurisdiction in suits to enjoin taxation when so doing will (1) prevent similar suits by a great many individuals likewise situated which present the same issues, as in *Hill* v. *Wallace* (259 U. S. at 62) where the suit in equity prevented a great many like suits by the various members of the Chicago Board of Trade, or (2) prevent a great number of suits by the same person that present the same issue (*Lee* v. *Bickle,* 292 U. S. 415) as illustrated in the case of P. Lorillard Company, which would have to file a claim for refund not only for each monthly payment, but also with different Collectors, due to location of its factories, in Jersey City, New Jersey, Richmond, Virginia, Cincinnati, Ohio. See, also: *Hale* v. *Allinson,* 188 U. S. at 72-9; *First State Bank* v. *Chicago, R. & I. R. Co.* (C. C. A. 8th), 63 F. (2d) 585. In the former this Court discussed the subject at length and held it must rest upon "the reasonable convenience of the remedy, its effectiveness, and the inadequacy of the remedy at law", as to which each case must be

> "decided upon its own merits and upon a survey of the real and substantial convenience of all parties, the adequacy of the legal remedy,

> the situations of the different parties, the points to be contested, and the result which would follow if jurisdiction should be assumed or denied * * * and whether within reasonable and fair grounds the suit is calculated to be in truth one which will practically prevent a multiplicity of litigation and will be an actual convenience to all parties and will not unreasonably overlook or obstruct the material interest of any."

See also *Raymond* v. *Chicago Co.,* 207 U. S. at 38-40; and *Wilson* v. *Illinois Co.,* 263 U. S. at 577.

In the fifth place, these limitations would not only prevent any *affirmative* recovery, but even preclude the use of these taxes, thus illegally collected and retained, as a *defense* by way of set-off, recoupment or counterclaim in proceedings by the Government to collect further taxes from the taxpayer.

A proceeding by the United States to collect a tax, though summary in form, is the equivalent, in substance, of a proceeding in Court for the same purpose, and therefore gives full right to the taxpayer by way of counterclaim to assert as a defense thereto any amounts due by the Government to the taxpayer. See *Bull* v. *U. S.* (295 U. S. at 260-2) which, citing *U. S.* v. *State Nat'l Bank* (96 U. S. at 35-6), *U. S.* v. *Ringgold* (8 Pet. at 163) and *The Siren* (7 Wall. at 154-5) also holds that no consent of the Government is needed in order to use such set-off or counterclaim as a defense.

Unquestionably, therefore, such preclusion brings into play the well-known ground of equity jurisdiction, namely, that of enabling the defendant to make such defenses. This is thoroughly established in

Scott v. *Armstrong* (146 U. S. at 507-8), where it was said that "courts of equity from a very early day were accustomed to grant relief in that regard, independently as well as in aid of statutes upon the subject"; and in *North Chicago Co.* v. *St. Louis Co.* (152 U. S. at 615-7), where the Court said:

> "Cross-demands and counterclaims, whether arising out of the same or wholly disconnected transactions, and whether liquidated or unliquidated, may be enforced by way of set-off whenever the circumstances are such as to warrant the interference of equity to prevent wrong and injustice."

V.

Processors may question the constitutionality of AAA.

Relying mainly on *Massachusetts* v. *Mellon* (262 U. S. at 486-8), it is claimed on behalf of the Government that processors may not question the use of the revenue powers in AAA, notwithstanding the burden it places on their businesses and the disposition it makes of their property, although undoubtedly were a State tax involved the processors could successfully maintain a suit in equity for the prevention of such an invasion of property rights.

But the Mellon case is an authority against, not for, this contention. Nor do we see how the contention can be sustained either on principle or authority. For if it be sustained, in vain have any limitations been imposed by the Constitution or its Amendments with respect to the revenue powers of Congress.

In the *Mellon* case the Court said the contention of the taxpayer, Frothingham,

> "though not clear, seems to be that the *effect of the appropriations* complained of will be to increase the burden of *future* taxation and *thereby* take her property without due process of law."

It was of this narrow, really fantastic, issue that the Court used the expressions, so much relied on by the Government:

> "The administration of any statute likely to produce *additional* taxation to be imposed upon a vast number of taxpayers, the extent of whose several liability is indefinite and constantly changing, is essentially a matter of public, and not of individual, concern. If one taxpayer may champion and litigate *such* a cause, then every other taxpayer may do the same, not only in respect of the statute here under review, but also in respect of every other appropriation act and statute whose administration requires the outlay of public money and whose validity may be questioned. * * *
>
> "We have no power *per se* to review and annul acts of Congress on the ground that they are unconstitutional. *That question must be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue is made to rest upon such an act.* Then the power exercised is that of ascertaining and declaring the law applicable to the controversy. * * * The party who invokes the power must be able to show not only that the statute is invalid, but that he *has sustained or is immediately in danger of sustaining some direct injury* as a result of its enforcement, and not merely that he suffers in some *indefinite* way in common with people generally."

And it was this issue that made pertinent the Court's distinction between enjoining local taxation where

> "The interest of a taxpayer of a municipality in the application of its money is direct and immediate",

and enjoining Federal taxation where

> "The relation of a taxpayer of the United States to the Federal Government is very different. His interest in the moneys of the Treasury—partly realized from taxation and partly from other sources—is shared with millions of others; is comparatively *minute and indeterminable;* and the effect upon *future* taxation of any payment out of the funds is so *remote, fluctuating and uncertain* that no basis is afforded for an appeal to the preventive powers of a court of equity."

Plainly, therefore, this case is squarely opposed to a doctrine of the breadth which the Government would deduce from it. It expressly said that the question would be considered "when the justification for some direct injury suffered or threatened presenting a justiciable issue is made to rest upon such an act".

Just as plainly such a "direct injury" presenting "a justiciable issue" and resting upon AAA is presented in the instant cases. Here the interest of the processor and the injury he may suffer are not "future", nor "minute and indeterminable", nor "remote, fluctuating and uncertain". On the contrary, "he has sustained" and "is immediately in danger of sustaining some direct injury as a result" of AAA's enforcement, for the effect on him of both the imposition of the tax and the use of the proceeds

thereof is direct and immediate, present and definite, large and embarrassing. Stated more in detail:

(1) There is the burden of the tax itself, which is a direct and immediate charge on the processor and his business, since by Sec. 9(a) of the Act the tax is levied upon "the first domestic processing" and is required to be "paid by the processor". According to the recent report of the Agricultural Adjustment Administration, its distributions, out of funds derived from the proceeds of these taxes, during the single fiscal year ending June 30th, 1935, totalled the tremendous sum of $807,868,134.47, made up as follows:

For Cotton,	$116,195,930.56
" Wheat,	98,223,175.49
" Tobacco,	28,767,914.02
" Corn—Hogs,	302,407,647.62
" Sugar,	17,844,145.08
" Surpluses,	12,591,001.49
" Drouth—Disease,	148,520,819.96
" Trust Funds,	13,704,070.23
" Tax Refunds,	30,292,782,89
" Expenses,	39,320,647.13

(2) There is the burden from the increase in the cost to the processor of the products he processes, through the use of the tax funds, again tremendous, and again direct and immediate in its effect on his business. Such increase is the real object of AAA and the proceeds of these taxes are by its terms explicitly set aside for purchase from the farmer of crop curtailment, and submission to Federal regulation of their intrastate activities, in order to produce a scarcity of agricultural commodities and thereby create a demand for them which will increase the price therefor. Thus, it is that we have had the plowing up of cotton and the killing of pigs, which

has changed our land from one of plenty to one of scarcity, and even caused us to have to import for the use of our people necessaries which we used to raise in abundance.

There is no gainsaying that under existing circumstances, indeed, under any circumstances, both these taxes and these increases in prices are huge and embarrassing burdens on the processors.

If the processor passes these burdens on, he must thereby increase his price and so encounter consumer resistance, if not resentment, with consequent curtailment in and serious damage to his business. The papers are daily telling us the effects of such rise in prices on the business of processors, as, for instance, the boycotting of meat shops and denunciation of the packers by reason of the rise in price of meats and the curtailing and even closing down of textile mills, as in New England, due to lack of demands for those products.

If the processor absorbs these burdens he thereby takes upon himself an enormous financial load, which is crushing many concerns and from which claim for refund affords no adequate relief at all. Such a claim can afford no relief to the processor as respects this increase in the cost of his materials through the unconstitutional taking of the property of the processor and bestowing it upon the farmer in the purchase of curtailment to occasion these higher prices; that unconstitutional use and effect can be reached and remedied only by a suit in equity. Heretofore a claim for refund might have secured recovery of all taxes paid, with interest, if the law were held unconstitutional. Now this claim for refund has been so circumscribed by these recent amendments of AAA as to make that course of procedure futile to a processor.

These facts, of course, show the processors will be not only directly but irreparably injured. See *Foster-Fountain P. Co.* v. *Haydel,* 278 U. S. 1; *Ohio Oil Co.* v. *Conway,* 279 U. S. 813; and *Champlin R. Co.* v. *Corporation Commission,* 286 U. S. 210.

The exertion of the revenue powers in AAA are expressly for the purpose of thus using the property of one set of private citizens to purchase from another set of private citizens, for their personal profit, Federal control of an intrastate activity. In other words, by this so-called taxation the property of the processors is bestowed upon the farmers as a consideration for their making contracts with the Secretary of Agriculture, whereby through him the Federal Government controls their growing of crops.

Heretofore Sec. 12(b) appropriated "*the proceeds derived* from all taxes imposed under this title" for "administrative expenses, rental and benefit payments, and refunds on taxes", whereas now, as amended by Sec. 3 of the 1935 Amendments, this section appropriates for those purposes "a sum equal to *the proceeds derived* from all taxes imposed under this title". But no difference in substance arises from this difference in language, because "no mere exercise of the art of lexicography can alter the essential nature of an act or thing" (*U. S.* v. *La Franca,* 282 U. S. at 572). The tax is to supply funds for the purposes of the act. Each wording appropriates only "the proceeds derived" from the taxes as, when and to the extent "derived" therefrom. There can be no "sum equal to the proceeds derived" from the taxes imposed unless and until those proceeds have been thus derived; the derivation is a condition precedent to the effectiveness of the appropriation.

Furthermore, by Sec. 9(a), as respects each basic agricultural commodity, the processing tax comes into effect only when the Secretary of Agriculture determines to make rental or benefit payments under Sec. 8, and such tax terminates when the Secretary determines that such rental or benefit payments shall cease. Accordingly, AAA makes the rental or benefit payments as respects each commodity the condition precedent of the existence of the tax. The payments and the taxes are linked together as cause and effect, neither exists without the other, and it is therefore impossible to say that the taxes are not imposed for the specific purpose of defraying these rental or benefit payments. In *Worthen Co.* v. *Kavanagh* (295 U. S. at 60), this Court said, with respect to kindred constitutional questions, that "what controls our judgment at such times is the underlying reality rather than the form or label". See, also *Mugler* v. *Kansas*, 123 U. S. at 661.

In *Gebelein* v. *Milbourne* (12 F. Supp. at 111), in granting temporary injunctions at the instance of processors, Chesnut, *D. J.*, said:

> "In form the tax is not open to objection because it is expressly stated that it is levied to provide funds for the purposes of government and the proceeds of the tax are to be paid into the national treasury. It would, however, be a narrow view to stop here in the inquiry because it clearly enough appears in the Act as a whole that the taxes are substantially earmarked and dedicated as a fund from which to defray the rental or benefit payments made to farmers as producers.";

and in a supplemental opinion on a motion to dissolve these injunctions after the 1935 Amendments he adhered to his former opinion (12 F. Supp. at 121-6).

Similarly, Otis, *D. J.*, said in his opinion in the *Larabee Flour Mills Case*:

> "The taxes were levied for the purpose of procuring funds with which to pay benefits to farmers. If there are other purposes they are incidental. If there is camouflage it does not conceal. Let it be said plainly, it is unquestionably the truth, the Agricultural Adjustment Act imposes taxes on processors to obtain money with which to pay so-called benefits to farmers, —to compensate them for wheat they have not sowed, for corn they have not planted, for pigs that never lived to squeal. The theory is that the great farming class, hitherto 'forgotten', will be so brought (or perhaps restored) to a more abundant life" (U. S. L. W. Index 65).

Thereby this case is brought within *Railroad Retirement Board* v. *Alton R. Co.*, where this Court in an opinion by Mr. Justice Roberts held the Railroad Retirement Act unconstitutional and granted an injunction against the tax because, among other things, it "denies due process of law by taking the property of one and bestowing it upon another" (295 U. S. at 350).

For the very same reason on principle injunctive relief may be had because Congress is likewise exceeding its authority by using its revenue powers to control intrastate affairs (*Linder* v. *U. S.*, 268 U. S. at 17-8; *Gibbons* v. *Ogden*, 9 Wheat. at 199; *Passenger Cases*, 7 How. at 446-7; *Veazie Bank* v. *Fenno*, 8 Wall. at 541; *Child Labor Case*, 259 U. S. at 38-40).

In *Hill* v. *Wallace* (259 U. S. at 62), this Court said:

> "Were this a state act, injunction would cer-

> tainly issue against such officers under the decisions in *Ex parte Young,* 209 U. S. 123; *Ohio Tax Cases,* 232 U. S. 576, 587; *McFarland* v. *American Sugar Refining Co.,* 241 U. S. 79, 82";

and it allowed the suit to be maintained and in it enjoined a Federal tax as unconstitutional because, *just as is the case here*:

> "It is impossible to escape the conviction, from a full reading of this law, that it was enacted for the purpose of regulating the conduct of business of boards of trade through supervision of the Secretary of Agriculture and the use of an administrative tribunal consisting of that Secretary, the Secretary of Commerce, and the Attorney General" (p. 66);

and thereby it undertook to regulate intrastate affairs which were beyond the power of Congress.

In *Miller* v. *Standard N. M. Co.,* 284 U. S. at 509-11, it was held an injunction should be awarded because the illegality was not "in the amount of the tax" but the "tax could by no legal possibility have been assessed against respondent". By parity of reason it is likewise with a tax forbidden by the constitution under the circumstances existing here. To this effect is *Ogden City* v. *Armstrong,* 168 U. S. at 240-1.

In *Nashville etc. Co.* v. *Wallace* (288 U. S. at 261-2), it was held a taxpayer could call in question, as violative of the Commerce Clause and 14th Amendment, a tax on the storage of gasoline, because "unlike" the *Mellon* case,

> "Valuable legal rights, asserted by the complainant and threatened with imminent invasion by appellees, will be directly affected to a speci-

fic and substantial degree by the decision of the question of law."

Other cases as to state taxes are: *Re Tyler,* 149 U. S. 164; *Fargo* v. *Hart,* 193 U. S. 490; *Raymond* v. *Chicago Co.,* 207 U. S. 20; *Wallace* v. *Hines,* 253 U. S. 66; *Dawson* v. *Kentucky Co.,* 255 U. S. 288; *Stewart Dry Goods Co.* v. *Lewis,* 287 U. S. 9; *Greene* v. *Louisville & Co.,* 244 U. S. 499; *Wilson* v. *The Illinois Ry.,* 263 U. S. 574.

While thus a decision of the question is unnecessary to awarding injunctive relief in this case, nevertheless we should add that we can perceive no valid reason, on principle or authority, why unconstitutional appropriations out of general federal funds may not be challenged and prevented by those contributing to those funds.

By some it is said that the courts may not, cannot properly, distinguish between a public and a private purpose. So says Prof. Corwin in Harvard Law Review (1923) XXXVI. *But this entirely overlooks the decisive fact that this court does decide for itself just this very question, and by the very test we think should be applied here.* Eminent domain is one instance (*U. S.* v. *Gettysburg Co.,* 160 U. S. at 681). Another instance is use of municipal funds (*Crampton* v. *Zabriskie,* 101 U. S. at 609). So also with respect to the use of state funds (*Topeka Case,* 20 Wall. at 662-7), notwithstanding "the scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts and a proper reluctance to interfere by injunction with their fiscal operations" (*Matthews* v. *Rodgers,* 284 U. S. at 525-6). The question is no more delicate than what directly affects interstate commerce. Due process of law has never been defined.

This Court said in *Olcott* v. *Supervisors* (16 Wall. at 690):

> "Now whether a use is public or private is not a question of constitutional construction. It is a question of general law. It has as much reference to the constitution of any other state as it has to the state of Wisconsin. Its solution must be sought not in the decisions of any single state tribunal but in general principles common to all courts. *The nature of taxation, and what uses are public and what are private, and the extent of unrestricted legislative power, are matters which, like questions of commercial law, no state court can conclusively determine for us.*"

Such use for private purposes is opposed alike to the principles of our state and national governments (*Topeka Case,* 20 Wall. at 662; *Calder* v. *Bull,* 3 Dall. at 388-9; *Railroad Retirement Act Case,* 295 U. S. at 350). Such use to control intrastate affairs is also forbidden (*Linder* v. *U. S.,* 268 U. S. at 17-8; *Child Labor Case,* 259 U. S. at 38-9; *Gibbons* v. *Ogden,* 9 Wheat. at 199).

Inescapably presented, therefore, are the alternatives Chief Justice Marshall in *Marbury* v. *Madison* (1 Cr. at 176-7) thus postulated for all time and circumstances:

> "To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation."

> "It is a proposition too plain to be contested that the constitution controls any legislative act repugnant to it, or that the legislature may alter the constitution by an ordinary act. *Between these alternatives there is no middle ground.* The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it."

It was said, *arguendo,* in the *Mellon Case* (though not a question therein as the case concerned "future taxation" and so did not present a justiciable issue), that a difference existed between a municipal and a federal taxpayer because the latter's interest in the application of the moneys was not so direct and immediate (262 U. S. at 486-7). If such constitutional questions—of the very utmost import (*Field* v. *Clark*, 143 U. S. at 695)—could ever be resolved on a basis of degree rather than intrinsic propriety, that time definitely has passed. Today the most direct and immediate interest and ominous threat to all is federal taxation and expenditure. Through a claimed unlimited welfare clause and a claimed inability of the federal taxpayer to prevent violations of constitutional restrictions we are face to face with crushing taxes (in billions, not millions), unbalanced budgets, debased dollars, repudiated obligations, inflation, bankruptcy.

"Congress as Santa Claus" (Michie, 1932) by the eminent author, Mr. Charles Warren, tells the story in a compact volume, full of fact and logic, which should be read by all. He speaks with authority by reason of his great and able labors, as shown by his other familiar and valuable works in this field—*and*

draws this very conclusion—the fate of Rome—and he might have added other nations (pp. 144-5).

Warmly espousing the Madison theory, he declares of the Hamilton theory (p. 8) that:

> "The inconsistency of this construction with the general theory of limited powers on which the constitution is based has been frequently pointed out, and never better than by John Randolph Tucker" (Tucker on The Constitution, I, 478, 480);

and adds this important information and opinion (pp. 26-7):

> "It is to be further noted that when President Monroe and Judge Story adopted this theory as to the scope of the General Welfare Clause, Madison's Notes of Debates in the Federal Convention had not yet been published, and all that they knew about the Clause was the meager information to be gained from the Journal of the Convention (published in 1819). They were ignorant, therefore, of the manner in which the words 'and to provide for the common defence and general welfare of the United States' came to be inserted after the words 'to pay the debts' and of the reasons therefor. These reasons are very apparent to one who now reads Madison's Notes: and Judge Story might well have given a different interpretation to the Clause, had he read them." (Citing The Making of the Constitution (1928), by Charles Warren, pp. 464-479; Judge Story's Position on the So-Called General Welfare Clause, by Henry St. George Tucker, see Cong. Record, December 13, 1927.)

Dealing with the "argument of the precedents" he shows that:

> "These three statutes—the Codfisheries Act in 1792, the San Domingo Act in 1794, and the Venezuela Act in 1812—the first, based on the Commerce Clause; the second, on the Debt Paying Clause; and the third, merely on a desire to foster our foreign relations—constitute the sole instances of Congressional donation of Government tax revenues, between the year 1789 and the year 1867—a period of seventy-eight years" (pp. 20-1, 75, 139).

that dispositions of land (pp. 70-2) and internal improvements (pp. 21-5, 86) rested on entirely different powers, and that (pp. 138-40) no money was ever

> "appropriated for relief of private citizens until 1867 when an appropriation was made, defended chiefly under the War powers. It was not until 1874 that relief to flood sufferers was given under a theory of General Welfare. Between 1875 and 1905, a period of thirty years, only seven similar acts were passed based on this power (in 1878, 1882, 1884, 1890, 1897, 1902). It is only within the last twenty-five years, therefore, that the flood of laws bestowing Government alms has deluged our statute books. Moreover, in only one instance—the Maternity Act—has any attempt been made to test the Constitutionality of these laws in the Supreme Court; and in that instance, the Court held that it had no jurisdiction (*Massachusetts* v. *Mellon, Frothingham* v. *Mellon* (1923), 262 U. S. 447). Hence, the precedents are not weighty evidence of Congressional power; for, as the Supreme Court has stated in a recent case, the weight of the 'use of Congressional legislation to support

or change a particular construction of the Constitution by acquiescence' must depend, in part, 'upon the number of instances in the execution of the law in which opportunity for objection in the Courts or elsewhere is afforded'." (*Myers* v. *United States* (1926), 272 U. S. 52, 170-171, per Taft, *C. J.*)"

He further shows that these acts met with constant, at times violent opposition, with numbers of such bills defeated, and others passed by the votes of those who openly admitted their unconstitutionality (pp. 72-91, 100-11). Accordingly, he concludes:

*"In view of these conditions as to Legislative precedents, it seems peculiarly unfortunate that the Supreme Court has never rendered a decision upon two fundamentally important questions which would determine the Constitutionally of such legislation—first, whether the Madison or the Hamilton construction of the General Welfare clause is correct; second, whether legislation for the benefit of favored individuals or classes of individuals is within the meaning of the words 'General Welfare'. And this is the more unfortunate, because the law as to the power of States and municipalities to spend the public moneys has been very clearly laid down by the Supreme Court in several cases, in which it has held that a tax must be for a public purpose, and that taxes levied or bonds issued for the benefit of private individuals are unconstitutional. * * * When the General Welfare Clause is utilized to enable the Federal Government to appropriate money for objects which belong properly to the States, it is not a mere technicality for us to raise the objection that such appropriations are in viola-*

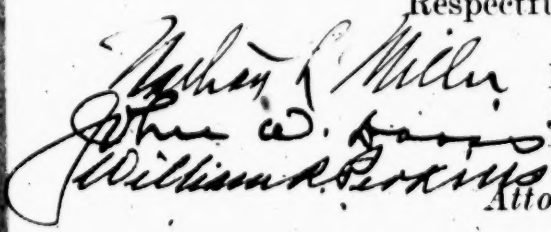
tion of the intent of the Constitution. Such an objection, as the Attorney General of the United States has recently said, 'goes to the very spirit of our Constitutional system, the maintenance of the proper balance between local and National Governments and the preservation of that system of local self-government and responsibility under which we have heretofore prospered' " (pp. 140-1, 143-4).

CONCLUSION.

It is submitted that the AAA is unconstitutional, for the fundamental reasons we have urged; that these reasons go to the very foundation of the Act as it formerly existed and as it now exists after the Amendments of August 24th, 1935; that on account thereof the whole Act should be held totally beyond the powers of Congress and void, with further making of agreements and collection of taxes thereunder barred and all taxes previously collected thereunder refunded with interest.

December 5, 1935.

Respectfully,



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Appendix

Extracts from House Conference Report (No. 1777), pages 31-4, on the limitations proposed by Sec. 27, added by Sec. 70 of the 1935 Amendments, on rate and claims for refund:

Amendments nos. 110 and 114: The House bill dealt with refunds and credits of taxes and with suits resulting in the recovery of taxes paid or collected under that chapter. Amendment No. 110 inserts appropriate provisions.

The first proviso (sec. 27 (a)) relates to the effective date of the limitation imposed by section 3312 (a) of the Revenue Act of 1926, as amended by section 1111 of the Revised Statutes, as amended by section 1 of the Act of March 3, 1931, and as further amended by section 803 (a) of the Revenue Act of 1932. As amended by section 803 (a) of the Revenue Act of 1932, section 3312 (a) provides that no refund of any tax shall be made unless a claim therefor is filed by the taxpayer within three years next after the payment of such tax, or within two years next after the mailing by the Commissioner to the taxpayer of a notice of disallowance of any part of the claim filed within the time prescribed in such section 3312 (a), as amended. The proviso in question provides that the limitation imposed by section 3312 (a), as amended, shall not apply to any claim filed before the date of the enactment of the Act, or to any claim filed after such date of enactment but based upon a payment made before such date of enactment, if the claim was filed within the time prescribed in section 3312 (a), as amended by section 1 of the Act of March 3, 1931, or within two years next after the mailing by the Commissioner to the taxpayer of a notice of disallowance of any part of the claim filed within the time prescribed in such section 3312 (a), as amended by section 1 of the Act of March 3, 1931. The House bill provided that the limitation imposed by section 3312 (a), as amended, should not apply to any claim filed before the date of the enactment of the Act, or to any claim filed after such date of enactment but based upon a payment made before such date of enactment, if the claim was filed within the time prescribed in section 3312 (a), as amended by section 1 of the Act of March 3, 1931, or within two years next after the mailing by the Commissioner to the taxpayer of a notice of disallowance of any part of the claim filed within the time prescribed in such section 3312 (a), as amended by section 1 of the Act of March 3, 1931. The Senate amendment struck out the House provision and inserted in lieu thereof a provision that the limitation imposed by section 3312 (a), as amended, should not apply to any claim filed before the date of the enactment of the Act, or to any claim filed after such date of enactment but based upon a payment made before such date of enactment, if the claim was filed within the time prescribed in section 3312 (a), as amended by section 803 (a) of the Revenue Act of 1932, or within two years next after the mailing by the Commissioner to the taxpayer of a notice of disallowance of any part of the claim filed within the time prescribed in such section 3312 (a), as amended by section 803 (a) of the Revenue Act of 1932. The conference agreement adopts the Senate amendment with an amendment which changes the reference to section 3312 (a), as amended by section 803 (a) of the Revenue Act of 1932, to section 3312 (a), as amended by section 1 of the Act of March 3, 1931, and as further amended by section 803 (a) of the Revenue Act of 1932. The effect of the proviso is to make the limitation imposed by section 3312 (a), as amended, inapplicable to any claim filed before the date of the enactment of the Act, or to any claim filed after such date of enactment but based upon a payment made before such date of enactment, if the claim was filed within the time prescribed in section 3312 (a), as amended by section 1 of the Act of March 3, 1931, or within two years next after the mailing by the Commissioner to the taxpayer of a notice of disallowance of any part of the claim filed within the time prescribed in such section 3312 (a), as amended by section 1 of the Act of March 3, 1931.

The second proviso of the House bill relating to refunds and credits of taxes was contained in section 27 (b) of that bill. This applied to refunds and credits of taxes accruing on or after the adoption of the amendment

Appendix.

Extracts from House Conference Report (No. 1757), pages 31-4, on the limitations proposed by Sec. 21, added by Sec. 30 of the 1935 Amendments, on suits and claims for refund:

> Amendments nos. 106 and 114: The House bill dealt with refunds and credits of taxes and suits relating to the recovery of taxes paid or accrued under the Agricultural Adjustment Act in two separate provisions.
>
> The first provision (sec. 21 (a)) related to suits with respect to taxes assessed, paid, collected, or accrued prior to the adoption of the amendatory act. In such cases no suit or proceeding was to be brought or maintained for such taxes, nor was any court to allow any recoupment, set-off, or refund of, or credit or counter claim for, any such tax. Pursuant to a final judgment or decree entered prior to the adoption of the amendatory act, such claims could be allowed. The limitations herein discussed were not to relate to overpayments of tax resulting from an error in computation, duplicate payments of tax, or to certain refunds and credits allowed by the Secretary in connection with processing of low value products, deliveries of products for charitable and other similar uses, or exportations. This provision was stricken out by Senate amendment no. 106 and the Senate matter relating to the same subject matter to it was inserted by Senate amendment no. 114.
>
> The second provision of the House bill relating to refunds and credits of taxes was contained in section 21 (d) of that bill. This applied to refunds and credits of taxes accruing on or after the adoption of the amendatory

act. Here the refund or credit was to be made or allowed only if the claimant established to the satisfaction of the Commissioner of Internal Revenue that the amount of tax claimed was not passed on to the buyer or that the claimant had repaid such amount to the buyer or ultimate purchaser. The refund or credit could also be made if the claimant filed with the Commissioner the consent of the ultimate purchaser to the allowance. In the case of the tax on hogs, the claimant had to establish to the satisfaction of the Commissioner that the amount claimed was not deducted from the price to the producer or he had to file with the Commissioner the producer's consent to the allowance of the refund or credit. The provision contained exceptions relating to low-value products, products for charitable uses, and exportations similar to those in section 21 (a). This provision was stricken out by amendment no. 114 and the Senate matter corresponding to it was inserted in the new matter in that amendment.

In the matter proposed to be inserted by the Senate amendment no distinction is made between claims and suits thereon on the basis of whether the taxes accrued before or after the adoption of the amendatory act. The conference agreement adopts this principle.

The Senate amendment does not deny access to the courts on back taxes as did the House bill. The conference agreement adopts this principle.

The Senate amendment required, in the case of both back taxes and future taxes, that the claimant (in order to have his claim prevail either before the Commissioner or before the court) establish that he had not passed the

amount of tax claimed on to the purchaser or back to the producer. This provision embodies the doctrine that no taxpayer ought to be unjustly enriched by a return of the tax if in fact he had not borne it. The conference agreement adopts the substance of this provision and expands and clarifies it to require the claimant to show that no person under the claimant's control or in control of the claimant passed on or back to any person the amount of tax claimed, that such amount was not included in a charge or fee for processing, and that the price paid by the claimant or any other person was not reduced by any part of such amount.

Under the Senate amendment, the facts required to be established to obtain the relief could be established before the Commissioner or before the court in any judicial proceeding relating to the claim. Under the Senate amendment the matter is determined on the basis of evidence taken by the court. Under the conference agreement a transcript of the hearing before the Commissioner is filed with and certified to the court and that record constitutes the evidence in the proceeding. No trial *de novo* on the facts by the court is provided for as is provided in the Senate amendment nor can judicial proceedings be brought in the absence of the prior administrative hearing and record. This provision applies to suits against the collector as well as against the United States and applies if the issue comes up in connection with any other suit involving the United States or the collector and the claimant.

The provisions of the conference agreement heretofore discussed do not apply to the follow-

ing refunds or credits: (1) Refunds or credits with respect to the processing of low value products under section 15 (a) of the act; (2) refunds or credits of tax on products for charitable use under 15 (c); (3) floor stocks tax refunds or credits under section 16; (4) refunds or credits of taxes on articles exported to foreign countries or to certain possessions under section 17 of the act; or (5) refunds or credits of tax on tobacco products for consumption beyond the jurisdiction of Federal revenue laws under section 317 of the Tariff Act of 1930.

The conference agreement strikes out a provision not contained in the House bill but inserted by the Senate amendment which required the establishment of the facts with respect to absorption of the tax by the taxpayer in Federal and State court suits for damages for the collection of the tax.

The conference agreement also inserts a provision relating to refunds and credits of floor-stocks taxes. The refunds or credits authorized under this provision are to be made to persons other than the processor or other person who paid the tax. The provision is applicable, for the most part, to wholesalers and retailers. If the processing tax is held invalid by reason of the Constitution, such persons having floor stocks on hand are entitled to the same refund or credit which they would be entitled to under section 16 (a) and (b) of the act had the tax terminated by proclamation. The claimant must establish to the satisfaction of the Commissioner, after notice and opportunity for hearing, that the tax was included in the price to the claimant. In judicial proceedings relating to such claims the findings and

record of the Commissioner constitute the evidence as in the case of suits by processors heretofore discussed.

The conference agreement also inserts a provision providing a special statute of limitations on suits for taxes based on the invalidity of the act. A claim must be filed with the Commissioner within 6 months after the tax has been finally held invalid. No suit can be begun before 1 year after the filing of such claim, unless the Commissioner renders a decision thereon within that time, or after 5 years after payment unless suit is begun within 2 years after disallowance of the part of the claim to which the suit relates. The Commissioner is required to send notice of disallowance to the taxpayer within 90 days after disallowance.

The conference agreement also removes, in cases to which the subsection relates, the limitations of the present law on the jurisdiction of United States district courts under which they cannot entertain suits of this character against the United States, if the claim exceeds $10,000. The effect of the agreement is to authorize such courts to take jurisdiction, if otherwise within district court jurisdiction, regardless of the amount in controversy.

Amendment no. 107: This amendment makes clerical changes in section number and subsection letter. The House recedes.

Amendment no. 108: Under the House bill, in probate, administration, bankruptcy, or other similar proceedings the claim of the United States for taxes under the Agricultural Adjustment Act and interest and penalties thereon was required to be allowed and ordered to be paid. The House bill permitted the reservation in the court's order, notwithstanding such allowance and payment, of the right to maintain

a claim for credit or refund of such amount and suit thereon. In such cases the claim and suit were reserved for disposition according to the provisions of law made applicable thereto by section 19 of the Agricultural Adjustment Act. This amendment broadens the provision to include all applicable provisions of law including those discussed in connection with amendments nos. 106 and 114. The House recedes.

Amendment no. 110: This is a clarifying amendment, and the House recedes.

Amendment no. 111: The House bill legalized and ratified taxes imposed under the Agricultural Adjustment Act prior to the adoption of the bill. This amendment includes tax penalties and interest within the provision. The House recedes.

Amendment no. 112: The House bill, in providing for legalization and ratification of taxes imposed under the act, states that they shall be validated as fully as if each such tax had been specifically fixed by Congress on May 12, 1933 (the date of the enactment of the original Agricultural Adjustment Act). This amendment strikes out the specific date, May 12, 1933, and makes the provision read "by prior act". The effect of the amendment is to make this legalization and ratification effective as if there had been in existence, immediately prior to the occurrence of the particular action ratified and legalized, an act of Congress authorizing such action. The House recedes.

Amendment no. 113. This amendment legalizes and ratifies all rental and benefit payments, all agreements with producers, and the adoption of other voluntary methods, prior to the date of the amendment. The legalization and

ratification is made effective as if there had been in existence, immediately prior to the taking of the particular action ratified and legalized, an act of Congress authorizing such action. The House recedes with an amendment including within the types of action legalized and ratified the initiation, if formally approved by the Secretary of Agriculture prior to the date of the adoption of the amendment, of adjustment programs under section 8 (1) of the Agricultural Adjustment Act.

Amendment no. 115: This amendment authorizes the Commissioner of Internal Revenue or his agents designated for the purpose, in connection with the establishment, by any claimant, of the facts required to be established by Senate amendment no. 114 as a prerequisite to obtaining any recovery, recoupment, set-off, refund, or credit, to examine books, papers, records, or memoranda bearing upon such facts, to require the attendance of the claimant or any officer or employee of the claimant or any other person having knowledge in the premises, and to take their testimony, with the power to administer oaths. The information thus obtained by the Commissioner is to be made available to the Secretary of Agriculture upon written request therefor; but must be kept confidential by the Department of Agriculture. Penalty is provided for violation of this requirement by any officer or employee of the Department. There was no comparable provision in the House bill. The conference agreement retains the substance of the Senate amendment with an additional provision specifically authorizing the Commissioner or any collector designated by him to summon witnesses on behalf of the United States or any

claimant, to appear and produce books, papers, correspondence, memoranda, or other records deemed relevant or material by the Commissioner, and give testimony or answer interrogatories. The provisions of Revised Statutes 4174 and 4175, relating to service of summons and proceedings upon failure to obey a summons, are made applicable to any summons issued under the subsection, and witnesses summoned are to be paid the same fees and mileage as are paid witnesses in the courts of the United States.

FILE COPY

IN THE

Supreme Court of the United States

October Term, 1935.

No. 577.

RICKERT RICE MILLS, INC., *Petitioner*,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, *Respondent*.

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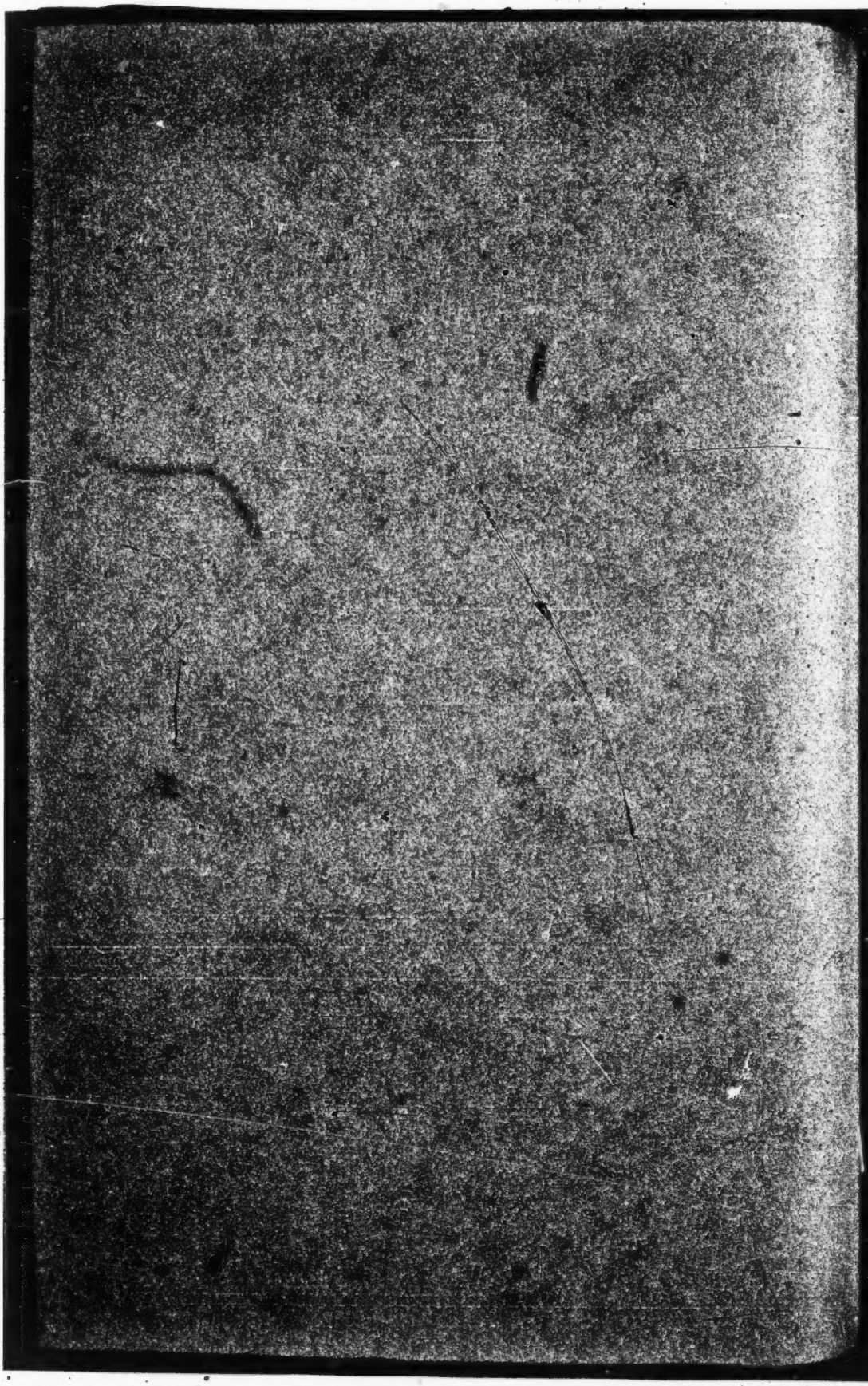

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BRIEF AMICI CURIAE

SCOPE OF BRIEF

Several briefs on file with this Court in this case and *United States of America* v. *William M. Butler, et al.* (October Term, 1935, No. 401) discuss in detail the question of the constitutionality of the Agricultural Adjustment Act both as originally enacted and as amended by H. R. 8492.[1] Other briefs herein argue that the Federal courts have not been deprived of their equitable jurisdiction by either section 3224 of the Revised Statutes or section 21(a) of the Agricultural Adjustment Act.

This brief therefore is addressed solely to the question whether the Federal courts, in the exercise of their equitable jurisdiction, should enjoin the collection of the processing taxes.

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[1]Public Laws No. 320, 74th Congress, 1st Session.

(1) Grounds for exercise of equitable jurisdiction.

In *Miller* v. *Standard Nut Margarine Co.*[2] this Court said:

> "And this court likewise recognizes the rule that, in cases where complainant shows that in addition to the illegality of an exaction in the guise of a tax there exist special and extraordinary circumstances sufficient to bring the case **within some acknowledged head of equity jurisprudence,** a suit may be maintained to enjoin the collector."

What, then, are some of the equitable grounds which are applicable in the case of processors of basic agricultural commodities?[3]

It is axiomatic that equity will exercise its jurisdiction where the law either provides no remedy[4] or provides a remedy that is not adequate.[5]

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[2]284 U. S. 498.

[3]While the case before this Court concerns only the rice millers, it seems reasonable to assume that the decision in this case will influence the actions of the courts below in granting or denying injunctions to thousands of processors of basic commodities other than rice. For this reason this brief occasionally makes reference to data concerning other basic commodities. The necessity for this is illustrated by the fact that only in the cotton textile industry has any governmental study been made of the effect of the processing taxes upon the industry. It is reasonable to assume, however, that the imposition of the processing tax has caused or will result in similar conditions in the industries processing other basic commodities.

[4]*Brinkerhoff-Faris Trust & Savings Co.* v. *Hill,* 281 U. S. 673.

[5]Corpus Juris (21 C. J. 50) succinctly states the rule as follows:

> "The existence of a remedy at law does not deprive equity of jurisdiction unless such remedy is adequate. By this is meant that it must be clear, complete, and as practical and

Over one hundred years ago this Court in *Boyce* v. *Grundy*,[6] said:

> "It is not enough that there is a remedy at law; it must be plain and adequate, or in other words, as practical as and efficient to the ends of justice and its prompt administration, as the remedy in equity."

In *Walla Walla* v. *Walla Walla Water Company*,[7] this Court said:

> "This court has repeatedly declared in affirmance of the generally accepted proposition that the remedy at law, in order to exclude a concurrent remedy at equity, must be as complete, as practical and as efficient to the ends of justice and its prompt administration, as the remedy in equity. Boyce's Executors v. Grundy, 3 Pet. 210, 215; Ins. Co. v. Bailey, 13 Wall. 616, 621; Kilbourn v. Sunderland, 130 U. S. 505, 514; Tyler v. Savage, 143 U. S. 79, 95."

In recent decisions this Court has affirmed this principle. In *Stewart Dry Goods Co.* v. *Lewis*,[8] the Court said that the remedy at law must be——

> "certain, reasonably prompt, and efficacious."

In the light of the above rules enunciated by this Court, it is important and necessary to analyze and consider section 21 (d)[9] of the Agricultural Adjustment Act, as

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efficient to the ends of justice and its prompt administration as the remedy in equity, or, as it is expressed in almost innumerable cases, in order to oust equity of jurisdiction the remedy at law must be 'plain, adequate and complete.' "

[6] 3 Peters 210.

[7] 172 U. S. 1, at p. 12.

[8] 287 U. S. 9.

[9] This section is quoted at page 77 of petitioner's brief.

amended, to determine whether in the light of that section the processor has, first, any legal remedy, and second, an adequate legal remedy. It is submitted that in practical effect section 21 (d) provides no legal remedy to the taxpayer whereby if it pays processing taxes and they should be unconstitutionally or illegally collected, it could recover them from the Government. In the second place, it is submitted that if a remedy at law is provided by section 21 (d), it is entirely inadequate, in that it is neither (1) plain, certain and clear, nor (2) complete, nor (3) prompt.

(2) There is NO remedy at law.

To establish that the enacted legislation does not provide any remedy at law, we desire to review its legislative history.

On June 14, 1935, Congressman Jones, of the House Committee on Agriculture, introduced the bill, H. R. 8492, which contained a provision to the effect that no suit or proceeding should be brought in any court for the refund of any amount of tax assessed, paid, or collected, or accrued prior to the date of the adoption of the amendment. The bill contained separate provisions relating to taxes accruing after the date of adoption of the Act. The bill was reported by the Committee on Agriculture to the whole House on June 15, 1935.

On the floor of the House various committee members explained the purpose of the Amendatory Act. Mr. Pierce of Oregon a member of the Agriculture Committee, said (Congressional Record, Vol. 79, No. 125, June 18, 1935, at page 9949):

> "It is the belief of the Committee that this amendatory act will prevent suits from being filed that will have any standing in a court of law or equity. For

this one reason, if for no other, this bill should be passed now at this session."

Mr. Hope, ranking minority member of the Agriculture Committee, stated on the same day (Congressional Record, p. 9957):

"Another important provision is that which prohibits the bringing of suits for refund or credits of any tax heretofore paid."

Chairman Jones, of the Committee on Agriculture, in the Committee's report (House Report No. 1241, page 20), also stated:

"The practical effect of this provision will be to prevent any refunds of taxes already collected upon the ground that the Act or the actions of the Secretary thereunder are illegal."

The bill was passed by the House of Representatives on June 18, 1935, and was introduced in the Senate on June 19, and referred to the Committee on Agriculture and Forestry. On July 3, the Senate Committee on Agriculture and Forestry reported the bill to the Senate with an even more drastic provision that the courts should not have jurisdiction of any suits to obtain refunds of taxes assessed, paid, collected, or accrued prior to the adoption of the amendment.

Senator Smith, Chairman of the Senate Committee on Agriculture and Forestry, in his report to the Senate (Senate Report No. 1011, p. 22) stated:

"The practical effect of this provision will be to prevent any refunds of taxes already collected upon the ground that the Act or the actions of the Secretary thereunder are illegal."

On the floor of the Senate (Congressional Record, Vol. 79, No. 147, July 18, 1935, p. 11857) a group of Senators led by Senator George of Georgia, Senator Borah of Idaho, Senator Norris of Nebraska, Senator Johnson of California, and Senator Gore of Oklahoma objected to the provision on the ground that it would deprive the taxpayer of his day in court. As a result of the objection of these Senators, a more liberal amendment was inserted in the bill. This amendment was adopted by the Senate by a vote of 61 to 23 (Congressional Record Vol. 79, No. 148, July 19, 1935, p. 11924). The act, as thus amended, was passed by the Senate July 23rd, and sent to conference.

It should be noted that the Conference Committee appointed by the Senate consisted of Senators Smith, Bankhead and Murphy, representing the majority, and Senators McNary and Norris, representing the minority. Senator Smith was Chairman of the Committee which had reported the provision proposing to deprive the courts of jurisdiction to entertain suits for refund. Senators Murphy and Bankhead had both voted against Senator George's amendment, and expressed themselves on the floor of the Senate as being in favor of the Committee amendment.[1]

---

[1]Senator Bankhead, on July 18, 1935 (Congressional Record, Vol. 79, No. 147, p. 11858), said:

"I am in favor of the Committee amendment."

Senator Murphy, on July 19, 1935, said (Congressional Record, Vol. 79, No. 148, p. 11921):

"It appears to me, Mr. President, that the courts should not be opened to question the raising of money or its appropriation by Congress except upon the constitutional ground that the tax is not uniform."

It would seem patent that in appointing the Senate conferees, the leaders of the Senate selected men who strongly favored the action of the House and Senate Committees, depriving taxpayers of the right to go to court, and were opposed to Senator George's more liberal amendment. Accordingly, it was to be expected that the conference report would adopt the attitude of the Committee on Agriculture. The conferees emasculated the George amendment by completely rewriting the section in the form in which it was finally enacted. The report was adopted by the House, and in turn was adopted by the Senate on August 15, 1935. On August 19, the Speaker and the Vice-President signed the bill and transmitted it to the President. The President signed the bill on August 24, 1935.

It is submitted that a review of this legislative history of the enactment of section 21 (d) discloses that from the inception of the amendments there was an admitted purpose on the part of those responsible for the legislation to prevent processors from obtaining refunds of processing taxes in the event that the statute should be declared unconstitutional or in the event that the taxes were illegally or erroneously exacted. In the first instance, the House proposed to bar suits for refund. The Senate Committee concurred in this proposed legislation. On the floor of the Senate, when objection was raised to the character of such legislation, some judicial remedy was provided for. This remedy, commonly known as the George Amendment, was effectively eliminated by the conferees in conference. Senator Borah stated with reference to the Conference report on this section :

> "That really nullifies the Senate provision." (Congressional Record, Vol. 79, No. 169, p. 13700. August 15, 1935.)

As finally enacted, section 21 (d) discloses a theoretical remedy at law, but in practical effect, it is in every way as complete a bar to suits for refund as the original House and Senate Committee provision.

It is submitted that the Court should take judicial notice of this legislative history of the adoption of section 21 (d).[2] It is apparent that it was the intent of Congress to deprive the taxpayer of all judicial remedy to obtain refunds of processing taxes unconstitutionally or illegally exacted. Mr. Justice Holmes, it should be remembered, stated in *Lash's Products Co.* v. *United States*:[3]

> "The phrase 'passed the tax on' is inaccurate, as obviously the tax is laid and remains on the manufacturer and on him alone. Heckman & Co. v. I. S. Dawes & Son Co., 12 F. (2d) 154. The purchaser does not pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all."

In the case of *Armour & Co. v. Harrison* (in the District Court of the United States for the Northern District of Illinois, Eastern Division), District Judge Barnes, on August 1, 1935, in granting a temporary injunction against the processing tax on pork, said:

> "Now, I have been considering that proposition ever since I first heard of this. I am not wholly inexperienced with the trial of law suits, and I am

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[2] *Duplex Printing Co.* v. *Deering*, 254 U. S. 445.
Texas & Pacific Railway Co. v. *Interstate Commerce Commission*, 162 U. S. 197.
Miller v. *Standard Nut Margarine Co.*, 49 Fed. (2d) 79, Aff'd 284 U. S. 498.
Hampton and L. F. Ry. Co. v. *Noel*, 300 Fed. 438.
Central Building, Loan & Savings Co. v. *Bowland*, 216 Fed. 526.

[3] 278 U. S. 175.

> familiar with the way counsel go about proving facts, and for the life of me I cannot figure out how a processor, assuming that he sells the pork and sells it for more than the amount of the processing tax, would ever be able to prove he did not pass on the tax. I have not been able to figure that out. I do not think he could. I do not think as a practical proposition he could, so I think these are just words, just words that mean nothing."

It is submitted that the language finally adopted in section 21 (d) is, as Judge Barnes stated in the above-mentioned case, "——just words." It is an attempt on the part of those responsible for the situation to overcome the effect of decisions that the statute is unconstitutional and to prevent manufacturers from recovering the taxes illegally collected from them, at the same time giving the appearance of a legal remedy in order to prevent the processors from enjoining the collection of the tax.

The processing tax is scrambled into the other costs of manufacture and no processor can determine the extent to which any one of the numerous items of cost are included in the sales price. The Commissioner of Internal Revenue in a letter dated September 25, 1934, said:

> "The processing tax attaches upon the first domestic processing of cotton and is payable by the processor. The amount paid as tax with respect to such commodity increases the cost of conducting his business and becomes an indivisible part of the production cost, similar to the manner in which other expenses such as depreciation, interest on capital invested and taxes paid to the State are incident to the conduct of a manufacturing business and enhance the cost of articles produced. The processing tax cannot be considered as a tax with respect

to any person other than the person liable to the Government for the tax.'"[4]

Sales price, on the other hand, is not determined primarily by the manufacturing costs of the particular manufacturer. It is determined by numerous factors entirely beyond the control of the processor, i.e., the economic law of supply and demand.[5]

Accordingly, the Bureau of Internal Revenue has ruled that the fact that a business is operated at a loss is not sufficient to establish that the tax has been absorbed.[6] The loss may be due to increased labor or raw material costs or to poor business management. It is thus apparent that the question of sales price is controlled by external factors and it is impossible to unscramble the sale price of an article to determine what items of manufacturing cost are included.

The problem is illustrated by assuming a case where a processor has a patent or a secret process on a particular article. It is assumed that he can sell that article for 50 cents because he has no competition and because up to that point the public will buy his article rather than do without or shift to some substitute. Consequently, the article can be sold for 50 cents whether the cost of manufacture is 10 cents or 40 cents and regardless of whether or not a processing tax is included in the cost of manufacture. It is impossible to say either that the processing tax has or has not been passed on.

The Congress has thus apparently imposed an impossible condition precedent to the obtaining of a refund of

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[4]For full text of this letter, see Appendix, p. 31.

[5]See E. R. A. Seligman, *The Shifting and Incidence of Taxation*, pp. 217-254.

[6]Footnote 1, p. 14.

unconstitutional or illegally collected processing taxes, and therefore equity should intervene and grant an injunction against the further collection of such taxes.

The Government may assert that section 21 (d) is not different from section 424 of the Revenue Act of 1928 and that the latter section was held constitutional in *United States* v. *Jefferson Electric Manufacturing Company.*[7] In that case, however, this Court said, in regard to the requirement that the manufacturer must show that he absorbed the tax in order to be entitled to a refund.

> "If the taxpayer has borne the burden of the tax, he readily can show it; * * *."

The statement of the Court was pertinent in every respect to the facts involved in the *Jefferson Electric Mfg. Co.* type of case. The tax therein involved was the automobile accessories tax and provided:[8]

> "Sec. 900. That there shall be levied, assessed, collected, and paid upon the following articles sold or leased by the manufacturer, producer, or importer, a tax equivalent to the following **percentages of the price for which so sold** ~~or leased~~——
>
> "(3) Tires, inner tubes, parts or accessories, for any of the articles enumerated in subdivision (1) or (2), sold to any person other than a manufacturer or producer of any of the articles enumerated in subdivision (1) or (2), 5 per centum;"

Patently, the tax involved in that case was fundamentally different from the processing tax. It was computed on the *sale price* of the article. If an article had a sale

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[7]291 U. S. 386.

[8]Sec. 900 (3), Revenue Act of 1918. See also sections 900 (3) and 600 (3) of the Revenue Acts of 1921 and 1924.

price of $10.00 the tax was 50 cents, and whether or not the tax was absorbed or passed was definitely determinable by whether the vendee paid $10.00 or $10.50.

An entirely different situation confronts the processing taxpayer for the tax is placed upon the initial step of manufacture and it is impossible to determine whether that **particular** cost of manufacture is included in the sale price of the article. In the President's Cabinet Committee Report on the Textile Industry[9] it is stated:

> "It is impossible to disentangle the effect of any individual element of cost upon selling price."

It is, therefore, submitted that because of the different factual situation involved, the case of *United States* v. *Jefferson Electric Mfg. Co.*, supra, cannot be considered as a precedent in determining whether the processor can or cannot prove that the tax has been passed on. Moreover, in that case the statute provided a procedure (viz., by filing a bond) whereby the tax could be recovered even though it had been passed on. (See section 424 (a) (3) Revenue Act 1928.) Further, the Court was not concerned in that case with the question of whether the remedy at law was adequate or whether equity might exercise its jurisdiction to enjoin the collection of the tax.

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[9]See Senate Document No. 126, 74th Congress, 1st Session—"A Report on the Conditions and Problems of the Cotton Textile Industry Made by the Cabinet Committee appointed by Him [the President]," p. 142 (August 25, 1935).

(3) There is no adequate remedy at law.

(A) *The Remedy at Law is not Plain, Certain and Clear. It is Obscure, Uncertain and Confused.*

Even assuming that Congress believed that there would be some possible way to prove that the processing taxes were not passed on, it is submitted that the remedy afforded by section 21(d) is so obscure, uncertain and confused that equity should exercise its jurisdiction to enjoin the collection of the tax.

Section 21(d) provides that a processor who seeks a refund of processing taxes must establish:

> "to the satisfaction of the Commissioner of Internal Revenue * * * that neither the claimant nor any person directly or indirectly under his control or having control over him, has"
>
> (a) Included the amount of the tax, directly or indirectly, in the price of the article,
> (b) Passed on any part of the tax for which a refund is claimed, to any other person in any manner,
> (c) Included the amount of the tax in the fee for processing,
> (d) Reduced the price paid the producer by the amount of the tax.

All four of the above elements must be established by the claimant to the *satisfaction* of the Commissioner. No standards are laid down in the Act by which the claimant can ascertain what proof will be sufficient to *satisfy* the Commissioner. Will it be sufficient if the claimant establishes that during the period in question his plant

was operated at a loss?[1] If operated at a profit, is he entitled to a reasonable return on his capital or will the presence of any profit, however small, require a conclusion that the tax has been passed on? Are costs and prices of varying periods to be used as the test? Must the claimant prove that any increase or decrease in the sale price of each article is more than offset by a corresponding increase or decrease in **net** manufacturing costs? If such is the type of proof required, must it be produced as to each sale, or as to the sales of each product, or as to the sales made during each month or other period of time?

It is at least patent that the cost of the auditing and accounting involved in such proof would, in many instances, be far in excess of the tax involved.[2]

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[1]Officials of the Bureau of Internal Revenue have advised that they do not consider such proof sufficient as it does not establish that the loss was caused *solely* by the processing tax. See also Senate Document No. 126, 74th Congress, 1st Session—"A Report on the Conditions and Problems of the Cotton Textile Industry, Made by the Cabinet Committee Appointed by Him [the President]," p. 141, (August 25, 1935), which states:

> "Profits or losses for individual processors are, however, in themselves no proof that the processing tax has been passed on."

[2]In *Burnet* v. *Houston*, 283 U. S. 223, relied upon below by the respondent, the taxpayer sought a deduction for a loss, the amount of which could not be fixed without proof of the March 1, 1913, value of the property sold. In the absence of such proof the Court could not determine whether or not the deduction claimed was legal and, accordingly, the Supreme Court decided against the taxpayer. In the present case, the illegality of the tax resulting from its unconstitutionality would require no proof. In the case cited the legality of the tax could not be determined without the proof.

A remedy at law that is so uncertain in its interpretation and which necessitates the expenditure of more money than the claim is worth in order to obtain a recovery, cannot be considered as a plain or certain remedy.

The statute also requires that this evidence must be presented at a hearing before the Commissioner of Internal Revenue. This would compel the taxpayer to bring all his books and records, his auditors and accountants, to Washington, in order to prove his case. It is not sufficient for the taxpayer to attempt to present this evidence *de novo* before the District Court in its own jurisdiction. The statute provides:

> "* * * In any judicial proceedings relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court."

The correct interpretation of the above quoted provision of the statute is obscure. Is it necessary to present the evidence on the entire case to the Commissioner or only the evidence on the question of whether or not the tax has not been passed on to the purchaser or back to the producer? Is the record so completed before the Commissioner conclusive? If not, how are exceptions thereto to be made and preserved? What rules of evidence shall govern the Commissioner?

Even more vital is the question of the right of the taxpayer to cross-examine witnesses and to have the right of a trial by jury guaranteed by the Seventh Amendment of the Constitution. The statute does not purport to give any protection of these fundamental rights and in this respect the procedure provided by section 21(d)

is fundamentally different from the remedies provided for the recovery of all other Federal taxes.

In the case of income, estate and gift taxes the taxpayer can elect either to test the deficiency in tax before payment thereof before the Board of Tax Appeals and the Courts or to pay the tax and sue in the District Court or Court of Claims in a trial *de novo*. In the case of all other taxes except the processing tax the taxpayer, after paying the tax, has the right of a trial *de novo* before either the District Court or the Court of Claims. In the case of the processing tax, on the contrary, no trial before the Board of Tax Appeals and no trial *de novo* in the Courts is afforded the taxpayer. The members of the House Conference Committee[3] explained section 21(d) in the Conference Report, as follows:

> "No trial *de novo* on the facts by the Court is provided for as is provided in the Senate amendment, nor can judicial proceedings be brought in the absence of the prior administrative hearing and record."

In litigating any other tax the taxpayer has the right to cross-examine the defendant's witnesses. The present statute does not provide for cross-examination of the witnesses produced by the Commissioner of Internal Revenue. Conceivably, and probably,[4] the Commissioner would place some of his evidence in the record *ex parte*

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[3]House Report No. 1757, 74th Congress, 1st Session, p. 32.

[4]Those familiar with the procedure in the Bureau of Internal Revenue in applying the relief provisions of section 210 of the Revenue Act of 1917 and sections 327 and 328 of the Revenue Acts of 1918 and 1921 well know that even though the taxpayer proved an abnormality in his income and thus became

and the taxpayer would not have a chance to test its truth or accuracy.

In addition, the taxpayer, if he desires to use it, has a common law right of action against the collector of internal revenue as an individual.[5] The taxpayer, in such action, is entitled to a jury trial which necessarily implies the right to have the jury hear the evidence and observe the conduct of the witnesses.[6] Such procedure is of necessity impossible under section 21(d). It cannot therefore be said that the taxpayer has an adequate remedy at law, or a right to resort to all the procedural protection to which he is entitled under the law.

Striking analogies exist between the facts of decided cases where the courts have exercised their equitable

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entitled to "special assessment" still the taxpayer was never given an opportunity to examine the Commissioner's files so that he could determine whether proper comparative rates were applied to his case.

[5]See *Penn Bros* v. *Glenn*, 10 Fed. Supp. 483, for a review of the decisions establishing the right to sue the collector at common law.

[6]*Francis* v. *Baker*, 11 R. I. 103.
Plimpton v. *Somerset*, 33 Vt. 283.
Cutler & Hinds v. *Richley*, 151 Pa. 195, 25 A. 96.
Wilson v. *York Tp.*, 43 S. C. 299, 215 E. 82.
De Walt v. *Kinard*, 19 S. C. 286.
Untermeyer v. *Bernhauer*, 105 N. Y. 521, 11 N. E. 847.
Climax Road Mach. Co. v. *Central Bank of Medina*, 156 N. Y. S. 854.
The implication of the dicta in *Wickwire* v. *Reinecke*, 275 U. S. 101, is not supported by authority or principle and is contrary to those decisions which hold that the action against the Collector to recover taxes arises out of the common law and not under any statute.

powers and the factual situation involved in the present case. In *Neild Manufacturing Corporation* v. *Thomas B. Hassett*,[7] the Court, in granting the temporary injunction against the collection of processing taxes, said:

> "This statute (R. S. 3224) applies to proceedings to enjoin the collection of taxes predicated upon the ground that they are illegal or unconstitutional, unless it is also made to appear 'that the enforcement of the tax would cause irreparable injury, or that there are other special circumstances bringing the case under some recognized head of equity jurisdiction, * * *' Henrietta Mills v. Rutherford Co., 281 U. S. 121, 124.
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> **"Uncertainity respecting the ability of the taxpayer to satisfy his claim if he pursued his remedy at law has been deemed sufficient to bring the case within the equity jurisdiction.** Stewart Dry Goods Co. v. Lewis, 287 U. S. 9; compare Wilson v. Illinois Southern Ry. Co., 263 U. S. 574; Atlantic Coastline v. Daughton, 262 U. S. 413."

In the case of *David* v. *Wakelee*,[8] in which the question was raised as to whether or not a court of equity could take jurisdiction over a suit to enjoin the assertion of a specified defense to an action on a note, the Court said:

> In the uncertainty which appears to exist in that State, as to whether a complaint setting forth all the facts would or would not be demurrable, we think it may be fairly said that the remedy at law is not so plain or clear as to oust a court of equity of jurisdiction. **It is a settled principle of equity jurisprudence, that if a remedy at law be doubtful, a court of equity will not decline cognizance of the suit.** [Citing cases.] **Where equity can give relief plaintiff**

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[7] 11 Fed Supp. 642.

[8] 156 U. S. 680 and 688.

ought not to be compelled to speculate upon the chance of his obtaining relief at law."

In *Union Pacific R. R. Co.* v. *Board of County Commissioners,*[9] a case to enjoin the collection of taxes, the statute originally involved afforded a complete and adequate remedy at law. Thereafter, amendatory legislation was passed which cast doubt upon the adequacy of the remedy at law. The Court said:

> "An examination of the new statute shows that the controversy just outlined is not without some real basis and that its solution is not free from difficulty. The question is purely one of State law, and, so far as we are advised, the Supreme Court of the State has not passed on or considered it. A ruling by us on the question would neither settle it for that court nor be binding in an action to recover the tax if paid. **In these circumstances it cannot be said that the company certainly or plainly has an adequate and complete remedy at law. On the contrary, the existence of such a remedy is debatable and uncertain.** And this being so, the situation is not one in which cognizance of the present suit properly can be declined."

In *Wilson* v. *Illinois Southern Railway Co. et al.,*[1] the remedy at law for recovery of illegal taxes provided for an appeal from the Commission to the Court "upon a record of the evidence and proceedings before it prepared by the Commission with a further appeal to the Supreme Court." This Court said:

> "How far such an appeal would be adequate upon a charge of fraud against the Commission may be doubted, and **the adequacy of a remedy at law must be clear."**

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[9]247 U. S. 282 at 287.

[1]263 U. S. 574, 577.

As illustrating the fact that equity will also intervene in cases where the remedy at law will involve needless expense, attention is called to the case of *Atchison, Topeka and Santa Fe Railway Co.* v. *Sullivan*,[2] where the court enjoined the collection of taxes. The court said:

> " * * * The adequate remedy at law which will deprive a court of equity of jurisprudence is a remedy as certain, complete, prompt, and efficient to attain the ends of justice as the remedy in equity. [Citations.] The facts and the law of this case have been ably presented to and carefully considered by two courts, and all the material issues in it have been determined. The complainant now has and it is entitled to keep the $3,580 requisite to pay the illegal portion of its tax. An injunction in this suit will enable it to retain it, and will end this controversy here. In order to obtain any adequate relief at law, it must pay over this $3,580 to the defendant, must bring, try, and prosecute to judgment an action at law against the county to recover it back, must possibly, it may be probably, come again to this court for review of that trial, and then possibly, perhaps probably, prosecute a petition for a mandamus to compel the levy of taxes to pay the judgment it shall recover, and after all this it will never secure more than a part of the actual expenses it will necessarily incur in prosecuting its action at law. This proposed remedy is neither as prompt, nor as certain, nor as complete, as the relief which may be granted through this suit in equity."

It is patent that the remedy provided for by section 21(d) of the Agricultural Adjustment Act, as amended, is uncertain, confusing, complicated, and needlessly expensive. The cited cases clearly cover such a situation and

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[2] 173 Fed. 456, 470 (C.C.A.—8th).

it is, therefore, submitted that equity should intervene and preserve for the processors a plain, certain, and clear remedy for the protection of their constitutional rights.

(B) *The Remedy at Law is not Complete. It will Cause Irreparable Injury and Multiplicity of Suits.*

In addition to the fact that the remedy at law provided for by section 21 (d) **is not plain, certain, or clear,** which in itself is sufficient grounds for granting an injunction, it is submitted that the **remedy at law is not complete.**

The statute provides that the processor can obtain a refund only if he can prove that he has not passed the tax on to his vendee, or back to his vendor. If this fact cannot be proved, neither the processor, his vendee nor any subsequent purchaser may recover this unconstitutional exaction, but the Government retains the amount so exacted. The result has been that in many sections of the country the vendees are threatening litigation with the processors to reduce contract prices by an amount equal to the tax, although the processor may already have paid it. The processor cannot afford to have an amount equal to the tax withheld by the purchaser, and at the same time continue to pay the tax to the United States and run the risk of attempting to obtain a refund thereof in the distant future. This, in effect, would require him to pay the same tax twice. There is no escape from the horns of this dilemna, and the taxpayers generally are suffering irreparable injury in innumerable cases.[3]

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[3]In *John A. Gebelein, Inc.* v. *Milbourne,* 12 Fed. Supp. 105 at 110, the Court said:

"Again, I cannot on the facts adopt the view contended for that the imposition of the tax is not a very serious bur-

Furthermore, the economic law of diminishing returns clearly applies in the present type of case. As the price of the goods is forced higher and higher by the increase in the cost thereof occasioned in turn by the reduction in the production of cotton and the imposition of the processing tax, the volume of sales of the manufacturer is decreased. The Court is familiar with the consumers' strikes that have been springing up throughout the country in protest of the rise in meat prices, and a similar situation confronts the cotton manufacturer. This is established in the case of cotton by the recent Cabinet Report on the Cotton Textile Industry, wherein it was stated:[4]

> "In so far as the prices of cotton textiles have been increased in consequence of the processing tax, sales have been to some extent reduced below what they

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den on the plaintiff or that its financial difficulties are due mainly to causes unrelated to conditions brought about by the policy pursued under the Act. * * * Since the Act has been in effect a successful business has been converted into a losing one, the operating losses before depreciation but after payment of salary in 1934 being about $15,000 and in the four months of 1935 being about $12,000. I am satisfied these losses are due principally, if not wholly, to the incidence of the tax and the conditions in the business brought about by the policy pursued under the Act. * * * Nor are the recent losses peculiar to the plaintiff but, as is shown by the testimony, have similarly affected a number of other Baltimore packers. I do not, therefore, find that the plaintiff's present financial condition is due to causes unrelated to the Act."

[4]Senate Document No. 126, 74th Congress, 1st Session—"A Report on the Conditions and Problems of the Cotton Textile Industry Made by the Cabinet Committee Appointed by Him [the President]," p. 141 (August 25, 1935).

would have been in the absence of the tax as an element of cost."

The effect of the Agricultural Adjustment Act on the cotton textile industry as a result of the increased cost of cotton products occasioned by the reduction in production of the raw material and the imposition of the processing tax is well illustrated by the figures showing the United States consumption of cotton.[5]

August 1, 1932, to July 31, 1933 ..... 6,137,000 bales
August 1, 1933 to July 31, 1934 ..... 5,700,000 bales
August 1, 1934 to July 31, 1935 ..... 5,360,000 bales

The processing tax was effective from August 1, 1933.

The effect of this decrease in sales of cotton textile products on the processors is emphasized by the data set out in the report of the Federal Trade Commission on Textile Industries,[6] in which is listed the rates of return on investment of numerous textile concerns. The rate of return for 84 companies engaged in spinning cotton yarns is illustrative:

Rate of Return	*Jan.-June, 1933* Percent	*July-Dec., 1933* Percent	*Jan.-June, 1934* Percent	*July-Aug., 1934* Percent
1. On average total investment	2.38	7.94	4.04	(0.61) Loss
2. On average total investment in textile business	2.25	8.55	4.21	(2.48) Loss
3. On average total capital-stock equity in textile business	1.43	8.97	3.84	(3.67) Loss

[5]Yearbook of Agriculture, 1935, p. 435, for years 1932-1933, and 1933-1934. For 1934 to 1935, Department of Agriculture Bureau of Agricultural Economics, Report on Acreage, Production, Carry-over, Supply and Consumption of Cotton, Table 8.

[6]Part II, Investment & Profit, Dec. 31, 1934, pp. 31-34. The same report establishes that except for the cost of raw material and the processing tax other costs remained almost constant, pp. 5, 6, et seq.

Comprehensive studies of the effect of the increased prices of basic agricultural commodities and corresponding decrease in consumer sales on the processor have not been conducted by any governmental agency. It is known, however, that as prices increased, consumption has materially decreased with respect to most basic agricultural commodities, until the low points in per capita consumption of pork, wheat, corn and cotton were reached in 1934 and 1935, as disclosed by statistics of the Department of Agriculture. Regardless of the financial effect on the processor, it is patent that he is losing sales daily. This loss in sales is a serious and irreparable injury which cannot be compensated for, even if a practical and efficacious means of obtaining a refund of this unconstitutional exaction were provided by law.

Not only is the remedy at law incomplete because of the irreparable injury that will ensue to the processor if it should attempt that remedy, but it is also incomplete because it will lead to a multiplicity of suits. If the purchasers deduct from their invoices the amount of the processing tax involved therein, the processors necessarily must sue each separate purchaser for the amount of the deduction. The number of suits involved would be countless, as each processor probably sells to hundreds of jobbers.

Furthermore, each time a processing tax is paid, a new cause of action arises. In view of the uncertainty of the meaning and interpretation of section 21(d), it is imperative that the taxpayer promptly file its refund claim as each tax is paid. Also, in view of the uncertainty as to the type of restrictive legislation future Congresses may pass in the event the Agricultural Adjustment Act is declared unconstitutional, taxpayers cannot safely wait to bring suits until claims covering several months' taxes

have accrued. Furthermore, many processors have large amounts of working capital tied up in processing tax payments and cannot afford to wait until numerous causes of action accrue and combine them in one suit. Such procedure will necessitate innumerable suits, protracted litigation and great expense to the taxpayer, the Government, and the courts.

In *Luer Packing Company* v. *Nat Rogan* (decided by the District Court of the United States for the Southern District of California, Southern Division, on July 27, 1935), Judge James said in granting a temporary injunction against the collection of processing taxes:

> "* * * The Court also concludes that the facts alleged show unusual and exceptional conditions warranting the issuance of an injunction, **exclusive of any consideration of the fact that Congressional action is threatened which may deprive the plaintiff of any right of action at law,** as to which allegation of fact it is believed the Court can give small weight because of its speculative and conjectural character. It is concluded that because of the serious doubt as to the constitutionality of the law, together with the fact that a multiplicity of suits must inevitably result (necessary to be brought by the plaintiff if it is relegated to its remedy at law to protect its rights) injunction should issue, as was held proper under similar findings in Lee v. Bicknell, 292 U. S. 415-421."

The present situation is similar to cases where it has been claimed that a bond is invalid. The remedy at law would require a suit on each interest coupon as it came due and was not paid. In *Thompson* v. *Emmett Irrigation District,*[7] the Court said:

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[7]227 F. 560, 567 (C. C. A.—9th). See also: *Walla Walla* v. *Walla Walla Water Co.*, 172 U. S. 1, 12, where the Supreme Court said:

"Where irreparable injury is threatened, or the damage

> " * * * In this situation, the present suit in equity will be practical, efficient, and prompt in determining once and for all the validity or invalidity of the bonds and coupons attached thereto, and it is manifest that a multiplicity of suits at law upon the coupons as they become due, the only present remedy at law, cannot afford such a practical and efficient result in the administration of justice."

It is, therefore, submitted that since the remedy at law afforded by section 21(d) will not prevent needless multiplicity of suits it is not adequate. Further, to pursue the remedy at law will cause all processors irreparable injury through the loss of sales and good will.

(C) *The Remedy at Law is not Prompt . It is Protracted and Dilatory.*

An analysis of section 21(d) shows that it provides for a procedure that is fraught with delays. Section 21(d) (2) provides:

> " * * * no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates."

Section 3226 of the Revised Statutes has been on the Statute Books since February 27, 1877. Since its incep-

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be of such a nature that it cannot be adequately compensated by an action at law, or is such as, from its continuance, to occasion a constantly recurring grievance, the party is not ousted of his remedy by injunction."

See also: *Wiemer* v. *Louisville Water Co.*, 130 Fed. 246.

tion this statute has always provided that if the Commissmissioner of Internal Revenue does not act upon a claim for refund within six months after the filing thereof, the taxpayer may institute his proceeding in court. No explanation of the change in this 60-year-old rule in procedure was made in any of the Congressional reports. It is submitted that it would seem that the deliberate purpose of the amendment is to delay judicial action on the taxpayer's claim.

In this connection it should be further noted that while the taxpayer is permitted to bring suit in court one year after the claim is filed, there is no limit placed upon the time for the Commissioner to hold his hearing, and make his finding as to whether or not the tax has been passed on. This hearing and finding must take place under the statute after the claim has been filed, and the record before the Commissioner is a necessary part of the court record.

To illustrate that section 21(d) does not provide an adequate remedy, by reason of the delay involved in its operation, we submit the following hypothetical case. A taxpayer files his claim after having paid the tax. The Commissioner rejects the claim as he has already done with thousands of others. Either before or after the rejection of the claim the taxpayer asks the Commissioner for a hearing in order to prove that the tax has not been passed on, so that the Commissioner may certify that fact to the Court for the purpose of trial. The Commissioner for one reason or another delays the hearing for a period of two years. It then is apparent that the taxpayer is barred by the statute of limitations from instituting his suit. If he does institute his suit within that period, the

Commissioner refuses a hearing, making it impossible to complete the record in the District Court.[8]

Even if the Commissioner should attempt all possible expedition it is apparent that it will take years to hold hearings and make findings. The procedure provided for by the statute necessarily concentrates in one administrative officer judicial functions which heretofore have been divided among the District Courts throughout the United States.

It is apparent that the procedure required by section 21(d) not only is burdened with delays, but that the remedy is solely within the control of the opposite party. The Commissioner of Internal Revenue is the sole judge of "when, where, and how" the procedure under section 21(d) shall take place.

The courts have long recognized the principle that where the remedy at law is within the control of the defendant equity will exercise its jurisdiction in order that the dispute may promptly be settled.

The language of the Court in *Fredenberg* v. *Whitney*,[9] is particularly apposite on this point. The Court said in overruling the defense that there was an adaquate remedy at law:

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[8]With a view to testing the constitutionality and construction of section 21(d), counsel, in one of their cases, requested a hearing before the Commissioner. The Commissioner wrote in reply:

> "In reply you are advised that the claims in question have been rejected in full and the claimant advised of the action taken. Since, at the time of action on these claims they were disposed of in accordance with the provisions of existing law, and the cases are closed, there does not appear to be any reason why a hearing should be granted this claimant under the provisions of section 21(d) of the Agricultural Adjustment Act, as amended."

[9]240 Fed. 819, 822. See also *German-American Inv. Co.* v. *City* of Youngstown, 68 Fed. 452.

"The legal remedy, if any, which could be asserted when formal action is entered to recover the penalty, is a remedy which rests solely in the will of the government. No action has been instituted. Demand has been made. When action will be instituted, and opportunity to make legal defense afforded, rests solely with the discretion of the public officials. 'Adequate remedy at law,' in Wheeler v. Bidford, 54 Conn. 244, 7 Atl. 22, is said to be a remedy vested in the complainant, to which he may at all times resort at his own option, fully and freely, without let or hindrance; and in Bank v. Stone, (C. C.) 88 Fed. 383, at page 397, the court said:

" 'It would seem clear that a court of equity will not withhold relief from a suitor **merely because he may have an adequate remedy at law if his adversary chooses to give it to him. A remedy at law cannot be adequate, if its adequacy depends upon the will of the opposing party.**' * * * In these days of industrial expansion, parties should have a right to have any issue which involves their financial status speedily adjusted, and this right should not be permitted to rest upon the discretion of the other party, and a legal remedy, to be adequate, must be a remedy which the party himself controls and can assert at the moment. When there is a doubt in the mind of the chancellor as to the adequacy of the remedy that doubt should be resolved in favor of the petitioners. Simpkins, Equity Suit, p. 25; Rumbarger v. Yokum (C. C.) 174 Fed. 55."

It is patent that the remedy provided for by section 21(d) is protracted, dilatory and vexatious. Accordingly, equity should exercise its jurisdiction to expedite the settlement of the litigation.

Conclusion

It is submitted that, assuming that the Agricultural Adjustment Act, as amended, is unconstitutional, and that the Courts have jurisdiction to entertain a suit in equity, this Court should enjoin the further collection of processing taxes.

Respectfully submitted,

JAMES S. Y. IVINS,
KINGMAN BREWSTER,

Of Counsel:

PERCY W. PHILLIPS,
O. R. FOLSOM-JONES,
RICHARD B. BARKER,
JOHN WARD CUTLER.

APPENDIX

TREASURY DEPARTMENT

WASHINGTON

MT-PT:C September 25, 1934.

Mr. W. Ray Bell,
The Association of Cotton Textile
Merchants of New York,
40 Worth Street,
New York City, New York.

Sir:

Reference is made to your letter of August 31, 1934, in which you advise this office that certain states, particularly the State of New Jersey, have deducted from their remittances covering invoices for cotton fabrics and other cotton articles the amount of the enhancement of the price incident to the processing tax imposed under the Agricultural Adjustment Act. You state that you cannot legally sue the state and request to be advised what steps you should take in order to meet the situation. You suggest the possibility that the regulations of this Department could be amended so as to provide for refunds of taxes paid with respect to articles delivered to any sovereign state.

In reply you are advised that article 9(2) (b) of Regulations 81 provides in part that processing for, or for sale to, the United States, a State, a Territory, or a possession, is subject to the tax, whether or not the commodity or the product derived from the commodity, is owned by the United States, such State, such Territory, or such possession.

The processing tax attaches upon the first domestic

processing of cotton and is payable by the processor. The amount paid as tax with respect to such commodity increases the cost of conducting his business and becomes an indivisible part of the production cost, similar to the manner in which other expenses such as depreciation, interest on capital invested and taxes paid to the state, are incident to the conduct of a manufacturing business and enhance the cost of articles produced The processing tax cannot be considered as a tax with respect to any person other than the person liable to the Government for the tax.

The addition to the net sale price of an article sold to the State of New Jersey, of an amount equal to the processing tax paid with respect to such article cannot properly be said to be an addition of the processing tax to such price, but is a procedure resorted to by the vendor to designate the proportionate amount of the gross sales price which was expended as a production cost incident to the processing tax and to explain the resulting increment in such gross sales price.

There are no provisions in the law on which to base an amendment to the regulations providing for refund of taxes paid with respect to articles delivered to a sovereign state, except where the articles are delivered for charitable distribution or use or for the use of an organization engaged in welfare work. Therefore, the matter does not come within the jurisdiction of this Bureau but is a matter to be adjusted between the parties concerned.

Respectfully,

D. S. Bliss,
Deputy Commissioner.

cc Collector,
. Customhouse,
New York, New York.

FILE COPY

Nos. 577-581, 585-587

In the Supreme Court of the United States

OCTOBER TERM, 1935

RICKERT RICE MILLS, INC., Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

A. B. DORE, Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

UNITED RICE MILLING PRODUCTS CO., INC., Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

BATON ROUGE RICE MILL, INC., Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

T. SIMON, Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

LEVY RICE MILLING CO., INC., Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

FARMERS RICE MILLING CO., INC., Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

NOBLE-TROTTER RICE MILLING CO., INC., Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF AMICUS CURIAE

FRANK J. MORLEY,
THOMAS NELSON PERKINS,
WARREN F. FARR,
ROPES, GRAY, BOYDEN & PERKINS,
KINGMAN, CROSS, MORLEY & CANT,

CHARLES B. RUGG
Amicus Curiae

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In the Supreme Court of the United States

OCTOBER TERM, 1935

Nos. 577-581, 585-587

RICKERT RICE MILLS, INC., Petitioner,
RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

A. B. DORE, Petitioner,
v.
RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

UNITED RICE MILLING PRODUCTS CO., INC., Petitioner,
v.
RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

BATON ROUGE RICE MILL, INC., Petitioner,
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RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

FARMERS RICE MILLING CO., INC., Petitioner,
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RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

NOBLE-TROTTER RICE MILLING CO., INC., Petitioner,
v.
RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

The undersigned respectfully petitions this Honorable Court for leave to file a brief as *amicus curiae* in the above-entitled suit. The Solicitor General and counsel for the respondents have assented in writing, as indicated by letters filed with the Clerk of this Court.

Your petitioner applies as counsel for the General Mills, Inc., Pillsbury Flour Mills Co., Commander Larabee Corp., Russell Miller Milling Co., and International Milling Co. Each of these concerns, directly or through its subsidiaries, is engaged in the processing of wheat. Each has paid substantial amounts to the Government as processing taxes. Several suits in equity in various federal courts, seeking to enjoin the collection of these taxes on the ground of the unconstitutionality of the Agricultural Adjustment Act, both before and after the amendments of August 24, 1935, have been brought by these mills.

They are all genuinely interested in the decision of the questions concerning the right to injunctive relief against the collection of the processing taxes and the constitutionality of the Act as presented in this suit.

Respectfully submitted,

CHARLES B. RUGG.

December 16, 1935.

In the Supreme Court of the United States

OCTOBER TERM, 1935

Nos. 577-581, 585-587

RICKERT RICE MILLS, INC., Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

And seven other consolidated cases.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF AMICUS CURIAE

PRELIMINARY STATEMENT

This brief is filed by counsel for General Mills, Inc., Pillsbury Flour Mills Co., Commander Larabee Corp., Russell Miller Milling Co., and International Milling Co. as *amicus curiae.*

For the purposes of our argument we assume that the so-called processing taxes levied after August 24, 1935, under the Agricultural Adjustment Act as amended are unconstitutional, and consider only the question whether, on that assumption, processors are entitled to equitable relief by way of injunction against the collection of such taxes. In discussing that question we consider merely whether R. S. §3224 and the amendments of August 24, 1935, deprive the courts of jurisdiction to grant such relief, and whether the conditions imposed by those amendments upon the processor's right of recovery are so incomprehensible and lacking in certainty of meaning

as to deprive the processor of a plain, adequate and complete remedy at law. We purposely refrain from discussing the question whether peculiarities in the nature of any particular industry or in the manner in which any individual business is conducted render it impossible to establish the facts which are made prerequisite to recovery, since we conceive that in this respect the adequacy of the legal remedy might depend upon the evidence adduced in the individual case. The arguments here submitted are believed to be of general application to all persons subject to the processing taxes imposed by the Agricultural Adjustment Act.

In the interest of brevity we are not printing the relevant statutes, which are set forth in the petitioners' brief.

SUMMARY OF ARGUMENT

I. It has always been recognized that the general rule against enjoining the collection of taxes is subject to an exception when, in addition to the illegality or unconstitutionality of the tax, there exist special circumstances bringing the case under some acknowledged head of equity jurisprudence. Since R. S. §3224 is merely declaratory of the general rule, with special reference to federal taxes, it has always been regarded as subject to the same exception. The plain import of this Court's decisions in both state and federal tax cases is that an injunction should be granted when the taxpayer lacks a plain, adequate and complete remedy at law.

Section 21(a) of the Agricultural Adjustment Act as amended does not evidence an intention on the part of Congress that the prohibition against injunctions should be absolute with regard to processing taxes. That section was not intended to limit the jurisdiction of the

courts. Being substantially identical with R. S. §3224 it must be similarly construed.

II. Section 21(d) of the Agricultural Adjustment Act as amended deprives processors of a plain, adequate and complete remedy at law. The requirement that processors establish that they have not passed on any part of the tax sought to be recovered is without intelligible meaning. It discloses only a broad purpose that taxpayers shall not be unjustly enriched and sets up no standard indicative of what Congress thought would constitute unjust enrichment. The processing tax is not like a sales tax. It is one of the many costs incident to manufacturing finished products from raw commodities, and its effect upon the price ultimately received by the manufacturer is not distinguishable from the effect of any other item of cost. This being so, it is impossible to determine whether the tax has been passed on, unless that term be given some arbitrary meaning not apparent from the statute. The mere fact that a processor sells his goods for a price sufficient to reimburse him for his costs, including the tax, does not prove that he would be unjustly enriched by a refund of the tax. A mere comparison of prices received before and after the imposition of the tax will not show whether the tax has been passed on. Nor will a comparison of the respective margins of profit or loss solve the problem. It could be wholly solved only by showing what the market price would have been if there had been no tax. This would involve pure speculation and could not possibly be proved.

The requirement that the processor establish that the price paid by him for the raw commodity has not been reduced by any part of the amount of the tax is equally

insusceptible of fulfillment. The effect of the processing tax to be paid by the processor cannot possibly be distinguished from the effect of the many other factors which influence market prices. To make recovery conditional upon proof of facts impossible of proof is to make the remedy virtually non-existent.

III. The respondent's contention that the taxpayer should be remitted to his remedy at law under Section 21(d) because in some way or other the courts may work out an interpretation of that section which will be fair and reasonable runs counter to well established principles of equity. If the remedy at law is not clear and free from ambiguity, equity will take jurisdiction. Taxpayers have consistently been granted equitable relief where statutes purporting to afford a legal remedy were of doubtful meaning or had never been construed.

The further suggestion of the respondent that, unless Section 21(d) is interpreted so as to allow the taxpayer adequate recovery, its provisions may be disregarded as unconstitutional when suit is brought for refund, and that the taxpayer, therefore, has no occasion to seek equitable relief now, rests on a false premise. The section might be held valid, although it took away all remedy, as being an assertion of the government's refusal to be sued. Even if it were unconstitutional so far as it barred suit against collectors individually, the mere right to sue individual collectors alone would be inadequate because of the impossibility of ever obtaining satisfaction of judgments against them.

ARGUMENT

I.

COLLECTION OF AN UNCONSTITUTIONAL TAX MAY BE ENJOINED, NOTWITHSTANDING R. S. §3224 AND SECTION 21(a) OF THE AGRICULTURAL ADJUSTMENT ACT AS AMENDED, IF THE TAXPAYER LACKS A PLAIN, ADEQUATE AND COMPLETE REMEDY AT LAW.

A. It is settled that R. S. § 3224 does not bar equitable relief when the remedy by way of suit for refund is not plain, adequate and complete.

It has long been an established principle of equity jurisprudence that the collection of a tax will not be enjoined on the sole ground that the tax is illegal or in violation of the Constitution. *Dows* v. *City of Chicago,* 11 Wall. 108; *State Railroad Tax Cases,* 92 U. S. 575; *Shelton* v. *Platt,* 139 U. S. 591; *Henrietta Mills* v. *Rutherford County,* 281 U. S. 121. But from the earliest times this Court in reiterating this general rule has expressly and consistently recognized that when, in addition to the illegality of the tax, there exist special circumstances bringing the case under some acknowledged head of equity jurisprudence, collection may properly be enjoined. *Dows* v. *City of Chicago, supra,* at p. 110; *Hannewinkle* v. *Georgetown,* 15 Wall. 547, 548; *State Railroad Tax Cases, supra,* at p. 613; *Union Pacific Ry. Co.* v. *Cheyenne,* 113 U. S. 516; *Miller* v. *Standard Nut Margarine Co.,* 284 U. S. 498, 509. The general rule is largely predicated on the fact that the taxpayer normally has a plain, adequate and complete remedy at law for the recovery of an illegal tax. As this Court observed in the *State Railroad Tax Cases, supra,* at p. 613, there has been provided "a complete system of corrective justice" by which taxpayers may have their rights determined, both in the executive departments and in

the courts, after the tax has been paid. The courts, generally speaking, are neither authorized nor equipped to apportion or equalize taxes or to make assessments. To permit judicial interference with the collection of the revenue, merely as a matter of convenience to the taxpayer, would seriously obstruct the processes of government. See *Miller* v. *Standard Nut Margarine Co., supra,* at p. 509; *State Railroad Tax Cases, supra,* pp. 613-617. When, however, no remedy at law is provided, or the remedy provided is inadequate or uncertain, the intervention of courts of equity is essential, not for the convenience of the taxpayer, but for the protection of his legal and constitutional rights.

It is now settled that the statutory inhibition on interference by courts of equity with the collection of federal taxes is subject to the same modifications and exceptions as the equity principle from which it was derived. The statutory provision, now constituting Section 3224 of the Revised Statutes first appeared in the Act of March 2, 1867, c. 169, 14 Stat. 475, as an amendment to Section 19 of the Act of July 13, 1866, c. 184, 14 Stat. 152 (R. S. §3226), which dealt with suits for the recovery of taxes illegally collected. The latter provision was an integral part of the "complete system of corrective justice", to which this Court referred in the *State Railroad Tax Cases, supra.* The prohibition on injunctions was in *pari materia* (*Snyder* v. *Marks,* 109 U. S. 189) and became a part of the same system, occupying a logical and rational place in that system since full provision was made for protection of the rights of taxpayers in courts of law. It merely codified and emphasized, with reference to federal taxes, the principle which the courts had always recognized. As this Court said in *Miller* v. *Standard Nut Margarine Co., supra,* at p. 509,

R. S. §3224 is declaratory of that principle "and is to be construed as near as may be in harmony with it and the reasons upon which it rests."

The plain import of the many decisions dealing with the subject of injunctions in tax cases is that an injunction may and should issue whenever the taxpayer, through no fault of his own, lacks a plain, adequate and complete remedy whereby he may recover through the usual processes of the law a tax which has been unconstitutionally or illegally exacted from him. There is grave doubt whether the exaction of an invalid tax and the withdrawal of all means of redress would not constitute deprivation of property without due process of law. See *Graham & Foster* v. *Goodcell,* 282 U. S. 409, 431; *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill,* 281 U. S. 673, 679 *et seq.* In any event, the courts have shown a natural disinclination to sanction such procedure and have without exception, so far as we are aware, granted relief in equity when the remedy at law appeared to be doubtful or lacking in efficacy.

Thus injunctions have been sustained in cases where the penalties for failure to pay the tax are such as to compel the taxpayer to comply, although obedience may result in confiscation of his property. *Ex parte Young,* 209 U. S. 123; *Ohio Tax Cases,* 232 U. S. 576, 587; *Hill* v. *Wallace,* 259 U. S. 44. The intervention of equity has also been held warranted where recovery at law would involve a multiplicity of actions by the same taxpayer (*Lee* v. *Bickell,* 292 U. S. 415; *Hill* v. *Wallace, supra; Wilson* v. *Illinois Southern Ry. Co.,* 263 U. S. 574) or where the financial ability of the taxing authority to satisfy a money judgment is in doubt (*Stewart Dry Goods Co.* v. *Lewis,* 287 U. S. 9). And in a number of cases this Court has held that injunctions should issue

when the existence of a remedy at law is not clear. *Davis* v. *Wakelee*, 156 U. S. 680, 687-688; *Union Pacific R.R. Co.* v. *Weld County*, 247 U. S. 282; *Dawson* v. *Kentucky Distilleries Co.*, 255 U. S. 288, 295-296; *Hopkins* v. *Southern California Telephone Co.*, 275 U. S. 393, 399; *Atlantic Coast Line R.R. Co.* v. *Daughton*, 262 U. S. 413.

In each of the above cases either there was no remedy at law or the remedy, if one existed, was not plain, adequate and complete. Manifestly this is the real criterion of the taxpayer's right to equitable relief, and the various grounds specified in the above cases merely furnished instances of the inadequacy of the legal remedy available to the taxpayer in each case.

By reason of the fact that the refund procedure heretofore afforded by the federal revenue acts has in the great majority of instances proved entirely efficacious, cases arising under the federal statutes have been few in number; but where circumstances appealing to equity have existed the federal courts have not hesitated to grant relief. This Court has drawn no distinction between federal and state taxes, as regards the circumstances calling for the issuance of injunctions. That no such distinction exists would seem to follow of necessity from the holding in *Miller* v. *Standard Nut Margarine Co.*, 284 U. S. 498, 509, that R. S. §3224 is no more than declaratory of the principles governing injunctions in tax cases generally. Even in earlier cases, however, the Court manifested an assumption, when not expressly stating, that R. S. §3224 would not bar injunctive relief if there were no plain, adequate and complete remedy at law. Thus in all the cases in which R. S. §3224 has been enforced, reference has been made to the existence of such a remedy. See *Dodge* v. *Osborn*, 240 U. S. 118, 120-121; *Bailey* v. *George*, 259 U. S. 16, 20; *Graham* v.

DuPont, 262 U. S. 234, 258; *Phillips* v. *Commissioner,* 283 U. S. 589, 595-596.

B. Section 21(a) of the Agricultural Adjustment Act as amended should likewise be construed as not barring equitable relief if there is no plain, adequate and complete remedy at law.

Section 21(a) of the Agricultural Adjustment Act, as amended by the Act of August 24, 1935, provides:

> "No suit, action, or proceeding (including probate, administration, receivership and bankruptcy proceedings) shall be brought or maintained in any court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed * * * on or after the date of the adoption of this amendment * * * ".[1]

Except for the specific reference in Section 21(a) to probate, administration, receivership and bankruptcy proceedings, that section is substantially identical with R. S. §3224. Consequently it must be assumed that Congress, in enacting Section 21(a), adopted as a part of that section the settled interpretation of the earlier statute. Established rules of statutory construction compel this conclusion. *Hecht* v. *Malley,* 265 U. S. 144, 153; *Latimer* v. *United States,* 223 U. S. 501, 504; *Sessions* v. *Romadka,* 145 U. S. 29, 42. Moreover, this Court stated

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[1] It is to be observed that this section, by its terms, applies only to taxes imposed *on or after* the date of the adoption of the amendment, *i.e.* August 24, 1935. "Imposed" is the equivalent of "accrued". See *Cochran* v. *United States,* 254 U. S. 387; *Hertz* v. *Woodman,* 218 U. S. 205. Since the tax is laid on the first domestic processing of a basic agricultural commodity (Sec. 9(a) of the Act) and is assessed at monthly intervals (Reg. 81, Art. 11), it is manifestly "imposed" not later than the last day of the month during which the processing occurs. Thus the tax with respect to wheat processed during August is "imposed" not later than August 31, although it is not payable until the end of September.

emphatically in *Miller* v. *Standard Nut Margarine Co., supra,* that "specific language undoubtedly disclosing that purpose" would be required to justify the inference that Congress intended to abrogate the "salutary and well established rule" permitting injunctions in tax cases where special and extraordinary circumstances are present. No such language was found in R. S. §3224, nor is it discernible in Section 21(a). When the latter section was under consideration, Congress must have been acutely aware of the pendency of hundreds of suits throughout the country, seeking to enjoin the collection of processing taxes. Had it desired to abrogate the "salutary and well established rule", it would doubtless have so stated in plain and unambiguous language. Its adoption of a provision so nearly identical with that previously described by this Court as not sufficiently specific to disclose any such intention must be regarded as a plain indication that it contemplated no departure from the settled rule.

The express reference in Section 21(a) to probate, administration, receivership and bankruptcy proceedings, together with the provision that in such cases the claims of the United States for processing taxes shall be allowed and paid, warrants the inference that the chief purpose of that section was to make applicable to such proceedings the principle of R. S. §3224.[2] The latter section did

[2] This inference derives considerable support from a memorandum on the constitutionality of the proposed amendments to the Agricultural Adjustment Act, prepared by the Solicitor of the Department of Agriculture and printed for the use of the Senate Committee on Agriculture and Forestry. (U. S. Government Printing Office, 1935.) After citing R. S. §3224 as a precedent for Section 21(a), which was then numbered 21(b), the memorandum states (p. 23):

> "It is the Government's position that if such a provision is valid with respect to suits or proceedings which restrain the collection directly, then a similar provision may be made with respect to suits or proceedings which have a similar indirect effect."

not prevent the courts from restraining payment or collection of taxes as an incident to the exercise of their powers in receivership and like cases. See *Scott* v. *Western Pac. R. R. Co.*, 246 Fed. 545 (C.C.A. 9th); *Penn. Steel Co.* v. *New York City Ry. Co.*, 193 Fed. 286 (S.D.N.Y.), affirmed 198 Fed. 774 (C.C.A. 2d), affirmed sub. nom. *United States* v. *Whitridge*, 231 U. S. 144. *Cf. Hill* v. *Wallace*, 259 U. S. 44; *Brushaber* v. *Union Pacific R. R. Co.*, 240 U. S. 1; *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429. This power of equity courts had been invoked by the receivers in the Hoosac Mills case (*Butler et al., Receivers* v. *United States*, 78 F. (2d) 1, now pending in this Court as No. 401, October Term, 1935), to test the constitutionality of the processing tax on cotton, and it is to be inferred that the Government wished to guard against future proceedings of the same character.[3]

We submit that Section 21(a) does not, and was not intended to, diminish or in any way affect the *jurisdiction* of Federal courts. Despite language in the opinion in *Dodge* v. *Brady*, 240 U. S. 122, 125, to the effect that R. S. §3224 is jurisdictional, it must be regarded as settled by the decision in *Miller* v. *Standard Nut Margarine Co.*, 284 U. S. 498, that that statute does not deprive the courts of the power to enjoin collection of taxes, but only reiterates a rule of equity jurisprudence as to the cases in which the power shall be exercised. As we have already pointed out, Section 21(a) is no stronger or more specific than R. S. §3224. That Congress appreciated the significance of the language used is plainly demonstrated by the legislative history of the amendments. Section 21, as originally reported by the

[3] Section 21(a) further prohibits proceedings under the Federal Declaratory Judgments Act in processing tax cases. This provision was presumably inserted because of the decision in *Penn.* v. *Glenn*, 10 F. Supp. 483 (W. D. Ky.) declaring the Kerr Tobacco Control Act invalid.

Senate Committee on Agriculture and Forestry, contained the present Section 21(a), as well as a subsection reading in part as follows:

> "No Federal or State Court *shall have jurisdiction* to entertain a suit or proceeding * * * (nor shall any such suit or proceeding be brought or maintained in * * * any such court) (1) for the recoupment, set-off, recovery, refund, or credit of, or on any counterclaim for, any amount of any tax. * * * " (Italics supplied.)

The reference to jurisdiction in the above provision was deliberate and intentional.[4] See Senate Report No. 1011, 74th Congress, 1st Session, p. 22. The inclusion in the same paragraph (which was eventually eliminated from the bill) of the provision that no suit shall be "brought or maintained" shows conclusively that Congress was aware of the difference in meaning and effect between the two expressions. The fact that the same words, "no suit * * * shall be brought or maintained" were

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[4] As first passed by the House of Representatives the bill prohibited the maintenance of a suit or the rendition of a judgment for the refund of any processing tax accrued prior to the adoption of the bill. The bill was amended by the Senate Committee on Agriculture and Forestry so as to deprive courts of jurisdiction to entertain such suits. This amendment occasioned extended debate in the Senate, both as to the power of Congress to deprive the courts of jurisdiction in this respect and as to the justice of such a provision. The propriety of the amendment was vigorously challenged by Senators Norris, Borah, George and others, and was defended by Senator Bankhead and others. See Congressional Record, 74th Cong., 1st Sess., pp. 11831-11847, 11855-11860, 11909-11914, 11919-11924. The jurisdictional provision was finally eliminated in favor of the present Section 21(d)(1). Senator Norris said (Cong. Record, *supra*, at p. 11914):

> "* * * I have no doubt that if the original amendment on page 58 had gone to a vote it would have been overwhelmingly defeated, and I was anxious to save the situation."

used in Section 21(a) strengthens the conclusion that no impairment of jurisdiction was intended.[5]

The committee reports state the purpose of Section 21(a) to be to "prevent the difficulties and embarrassments to the administration of the act" which are caused by injunction proceedings, and "to confine the taxpayer to the usual and orderly procedure of paying the tax and then suing for refund." House Report No. 1241, 74th Congress 1st Session, p. 20; Senate Report No. 1011, p. 23. The same purpose, of course, led to the enactment of R. S. §3224, as well as to the formulation of the principle of equity which that section embodies. See *State Railroad Tax Cases, supra.* Both sections manifestly presuppose the adequacy of the remedy at law. As has been pointed out, R. S. §3224 is but one feature of a comprehensive system designed to afford the taxpayer means of having his legal and constitutional rights determined and safeguarded, and at the same time to prevent undue delay in the collection of the public revenue. When, because of special and unusual circumstances, the normal method of obtaining a determination as to the validity of a tax proves inadequate to protect the taxpayer's rights, and the statutory scheme fails, R. S. §3224, does not bar equitable relief. *Miller* v. *Standard Nut Margarine Co., supra.* We contend that the same is true of Section 21(a). Congress undoubtedly supposed that the legal remedy for the refund of processing taxes, in the event such taxes should be held unconstitutional, would be adequate and efficacious. The Committee reports quoted above indicate that Section 21(a)

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[5] Compare Section 4 of the Act of March 23, 1932, c. 90, 47 Stat. 70 (U. S. C., Title 29, Sec. 104):

> "No court of the United States *shall have jurisdiction* to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute * * *". (Italics supplied.)

was adopted on that supposition. If, however, as we shall attempt to show hereafter, the legal remedy proves to be wholly uncertain and inadequate, the premise upon which Section 21(a) was based disappears, precisely as in the case of R. S. §3224. Only two alternatives remain: either to construe Section 21(a) as R. S. §3224 has been construed, or to assume that Congress intended processors to be without adequate means of protecting themselves against the imposition of a tax of doubtful validity. We submit that "specific language undoubtedly disclosing that purpose" would be necessary to justify the latter assumption.

II.

SECTION 21(d) OF THE AGRICULTURAL ADJUSTMENT ACT AS AMENDED DEPRIVES THE TAXPAYER OF A PLAIN, ADEQUATE AND COMPLETE REMEDY AT LAW.

A. The requirement that the taxpayer must establish that the tax has not been "passed on" to any person in any manner sets up no intelligible rule or standard of action.

Under R. S. §§ 3220, 3226 and 3228, which were made applicable to processing taxes by Section 19(b) of the Agricultural Adjustment Act there was available to processors, prior to August 24, 1935, the familiar remedy for recovery of taxes, requiring only a showing that the taxes had been illegally collected. By the amendatory Act of August 24, 1935, however, Congress drastically modified that remedy, so that a processor may no longer recover by showing simply that the taxes are illegal and that he has paid them, but must satisfy a multitude of other conditions as well. These other conditions are found in Section 21(d) (1) of the Act as amended, which is set out in full at page 77 of the petitioners' brief[6] In

[6] This section originated in a bill promulgated by the House Committee on Agriculture on June 5, 1935 (shortly after this Court's de-

substance that section provides that no refund shall be made of any amount of any processing tax unless it shall be established that neither the claimant nor any person directly or indirectly under his control or having control over him has, directly or indirectly—

(a) included such amount in the price of any article processed from the commodity with respect to which the tax was imposed, or

(b) passed on any part of such amount to any person in any manner, or

(c) included any part of such amount in the fee for processing, *and*

(d) that the price by the claimant or such person was not reduced by any part of such amount.

These facts must be established to the satisfaction of the Commissioner of Internal Revenue, and in any judicial proceeding to obtain a refund, a certified transcript of the proceedings before the Commissioner shall be "filed

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cision in *Schechter Poultry Corp.* v. *United States,* 295 U. S. 495) as a substitute for a pending bill (H.R. 8052) to amend the Agricultural Adjustment Act. The substitute bill contained a provision wholly prohibiting administrative or judicial refunds of taxes accrued prior to the adoption of the amendment. This provision was carried over, in slightly revised form, into a new bill (H.R. 8492) which was introduced on June 14, 1935, and which was the bill finally enacted. That bill also provided that there should be no refunds of taxes accruing after the adoption of the amendment unless the taxpayer established that he had not passed the tax on to his customers or passed it back to the producer of the commodity processed, or that he had repaid it to such producer or to the ultimate purchaser of the article manufactured by the processor, or that the producer and the ultimate purchaser consented to the allowance of the refund. The provision prohibiting refunds of taxes accrued prior to the amendment was eliminated by the Senate after considerable debate, and the passing on and passing back provision, in more drastic form, was made applicable to all taxes under the Act, but without the alternatives allowing recovery if the tax were repaid to the producer or ultimate consumer, or their consent to the allowance of the refund obtained. See note 4, *supra,* p. 14. See also House Report No. 1757, 74th Cong., 1st Sess., p. 32.

as the record in the case and shall be so considered by the Court."

In attempting to extract a rational and practicable meaning from Section 21(d) (1), *supra*, it is essential to bear in mind the nature of the tax with which that section is concerned. At first glance, the statute may appear to lay down straightforward, intelligible and equitable conditions with which any taxpayer should be able readily to comply. But when one attempts to translate those conditions into a workable mode of action, difficulties of the most fundamental character manifest themselves. The meaning which at first seemed clear is found to be vague and unascertainable. The precise intent of Congress becomes a matter of speculation.

The processing tax is in the nature of an excise and is levied upon the act of processing any one of the specified basic agricultural commodities. It is imposed the moment the processing operation begins, is measured by the number of units of the commodity put in process, and becomes payable solely by reason of the processing, regardless of whether the goods manufactured are ultimately sold or consumed. See Regulations 81, Art. 7; P.T. 10, XIII-1 C.B. 452. In the case of wheat, the tax is measured by the number of bushels of wheat put in process. See Wheat Regulations (T.D. 4579), Art. 2. It is not levied upon the sale of the resulting products, nor is it calculated upon the price for which such products are sold. Thus it differs in material respects, as will be shown more fully hereafter, from the tax considered by this Court in *United States* v. *Jefferson Electric Mfg. Co.*, 291 U. S. 386. It is imposed long prior to any sale by the taxpayer, bears no relation to such sale, and in particular is in no way dependent upon the sale price.

It is apparent, therefore, that the processing tax is not an immediate factor in the transaction whereby the taxpayer's product passes from him to the consumer, as is a sales tax. It is but an item of cost which is combined with the various other items, such as raw material, wages, repairs and depreciation, other taxes and management overhead, which go to make up the total cost to the manufacturer of the goods which he produces. In its influence upon the price received by the manufacturer for his goods after the entire manufacturing operation has been completed, the processing tax is not distinguishable from the other cost items mentioned above.

How, then, is the taxpayer to ascertain, in terms of judicial proof, whether the processing tax, as distinguished from all other expenses, has or has not been "included in the price" of his products or otherwise "passed on" to his vendee or any other person in any manner? The answer to this question depends primarily upon the effect to be given to the phrases "included in the price" and "passed on". Those phrases, we submit, do no more than evidence a general purpose that the taxpayer shall not recover if the economic burden of the tax has been shifted from him to any other person. No attempt is made to declare what constitutes "passing on" the tax, or to indicate how it may be determined whether the tax is passed on. The concept which the statute appears to embody lies in the broad field of economic generalization. Yet the science of economics furnishes no assistance in its practical application to the situation of an individual taxpayer. Only by adopting purely arbitrary standards could anyone purport to decide whether, and to what extent, the burden of a particular tax had been shifted. But the statute furnishes no standard, and none that might be suggested would

clearly and fully effectuate the vague purpose which Congress has expressed.

Since the processing tax constitutes part of the cost to the processor of converting raw agricultural commodities into consumable articles, the arbitrary rule might be adopted that any processor who sold his goods at not less than their total cost (including the amount of the tax) had passed the tax on. Although such a rule would derive some support from the provision that the tax must not have been "included in the price", we submit that this cannot have been what Congress intended. The only basis upon which any justification can be found for Section 21(d) (1) is that it was designed to prevent "unjust enrichment" by denying refunds to taxpayers who have not themselves been injured by the tax. See House Report No. 1241, 74th Cong. 1st Sess., p. 20; Senate Report No. 1011, p. 23; House Report No. 1757, p. 32. The mere fact that a processor has sold his goods at cost, including the tax as one item of cost, is no sign that the burden has not been borne by him. Such a rule would be manifestly unfair. It would deny recovery to a taxpayer who by absorbing the tax was unable to sell his goods for more than cost although prior to the imposition of the tax he had been able to realize a profit. *A fortiori* it would deny recovery to any taxpayer who made a profit, even though he had previously made a greater profit. On the other hand, any taxpayer who suffered a loss would automatically be regarded as having borne the burden of the tax, whether or not it appeared that the loss was occasioned by the tax as distinguished from other factors bearing upon costs and prices.[7]

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[7] In the report of the President's Cabinet Committee on the Cotton Textile Industry (Senate Document No. 126) the following statement is made (p. 141):

The District Court for the Southern District of Mississippi, denying an injunction in *Meridian Grain & Elevator Co.* v. *Fly*, 12 F. Supp. 64, 66, stated that the test of passing on was whether the processor realized a "fair" profit over and above the total cost of manufacture, including the amount of the tax. This rule, we submit, finds no support in the statute. It raises immediately the question of what is a reasonable profit, and the statute furnishes no clue. Moreover, like the rule previously suggested, it would permit recovery by all taxpayers selling at a loss. We feel confident that any such interpretation of the Act would be strenuously opposed by the Commissioner. There is no necessary relation between reasonable profits and the question whether the tax has been passed on. As between different manufacturers profits may widely differ even though substantially the same prices are received. A manufacturer leaving his prices unchanged after the imposition of the tax might still make a "reasonable" profit, although there could be no doubt that he had been injured by the tax.

In an unreported opinion granting a temporary injunction on August 1, 1935, in the case of *Armour & Co.* v. *Harrison*, the District Court for the Northern District of Illinois queried whether it would be possible for a processor selling his product for anything in excess of the amount of the processing tax to prove that he had

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"• • • Profits or losses for individual processors are, however, in themselves no proof that the processing tax has been passed on. For many years large numbers of establishments have been operating at losses and gradually going out of business. This situation would remain unchanged if all mills passed on the full amount of the processing tax. To argue that losses indicate failure to pass on the processing tax is tantamount to arguing that any loss which a mill may sustain should be ascribed to the processing tax."

not passed the tax on.[8] That court evidently recognized the impossibility of allocating the price received, if that were less than cost, as between the tax and other cost items. Thus if the flour manufactured from one bushel of wheat were sold for as little as thirty cents (the amount of the tax per bushel), it might be argued that the thirty cents, or some proportionate part of it, represented the tax.

The fallacy in the tests suggested above lies in their failure to recognize that there must be some causal connection between the processing tax and any increase in the price or margin of profit before it can properly be said that such increase shows the tax to have been passed on. The difficulty in abandoning such arbitrary rules is that any attempt to determine whether and to what extent the economic burden has actually been shifted requires consideration of matters not susceptible of proof.[9]

It may be suggested that the question whether the tax has been passed on can be answered by comparing prices received before and after the imposition of the tax. On

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[8] The portion of the opinion dealing with the question of "passing on" reads as follows:

> "I am not wholly inexperienced with the trial of lawsuits, and I am familiar with the way counsel go about proving facts, and for the life of me I cannot figure out how a processor, assuming that he sells the pork and sells it for *more than the amount of the processing tax,* would ever be able to prove he did not pass on the tax. I have not been able to figure that out. I do not think he could. I do not think as a practical proposition he could, so I think those are just words, just words that mean nothing" (Italics ours.)

[9] Section 21(d)(1) requires that the conditions therein prescribed be established "to the satisfaction of the Commissioner of Internal Revenue". This means that the facts are "not lightly to be inferred but to be established by proof which convinces in the sense of inducing belief." *United States* v. *Jefferson Electric Mfg. Co.*, 291 U. S. 386, 398.

this basis an increase in prices following the levying of the tax would be taken as proof that, at least to the extent of the increase, the tax was being passed on. This would be to assume, however, that the processing tax was the only new factor exercising an influence on prices, which is obviously not so. In the Report of the Cabinet Committee on the Cotton Textile Industry (see note 7, *supra*) it was said (p. 142):

> "It is impossible to disentangle the effect of any individual element of cost upon selling price. * * *"[10]

It is a matter of common knowledge that during the past two and a half years there has been a general rise in prices, even in the case of articles not manufactured from agricultural commodities. This is, no doubt, due in part to increased costs brought about by a variety of circumstances, including industrial and labor legislation. But beyond question there have been other influences at work which would have raised prices regardless of changes in costs. The devaluation of the currency, for example, was decreed for the express purpose, among others, of raising prices and thus giving an artificial stimulus to industry and agriculture. Federal relief expenditures and subsidies to the farming population have presumably contributed in some degree to the raising of prices. In order to determine the extent to which in any given case the enhancement of the price received was attributable to the processing tax, it would

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[10]The Report goes on to state, in the same paragraph:

> "The processing tax is commingled with other costs, and the competitive forces in the industry tend to operate to bring costs and prices into relation to each other. *In this sense,* the processing tax is, by and large, passed on to the consumer of the final product." (Italics supplied.)

We have previously pointed out (*supra*, p. 20) why we think Congress cannot have intended to use the expression "passed on" in this sense.

be necessary to discount all these other factors—a task which would require the most minute and accurate analysis of the entire economic situation. Obviously any estimate that might be attempted would fail to meet the test of judicial proof.[11]

The problem is not materially advanced if cost changes be eliminated and a comparison be made between the margin of profit or loss prior to the imposition of the tax with the margin of profit or loss after the tax became effective. Such a comparison would wholly ignore the other variables, such as supply, demand, consumer purchasing power, fluctuations in the currency, and so forth, the effect of which cannot possibly be calculated with any degree of precision. Yet it would appear to be conceded by the Government that the question whether the tax is passed on depends in large part upon factors such as these. In *Agricultural Adjustment, A Report of Administration of the Agricultural Adjustment Act, May 1933 to February 1934,* it is said (p. 220):

> "The question 'who pays the processing tax' cannot be answered by a mere examination of the change in producer, wholesale and retail prices and the final spread between them."

The only fair way of determining whether the processor has borne the burden of the tax would be to determine what the market price of his goods would have been if there had been no processing tax. This would, of

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[11] In *Baltic Mills Co.* v. *Bitgood,* 12 F. Supp. 132, 134, the District Court for the District of Connecticut said:

> "• • • Obviously a comparison of prices obtaining prior to the original imposition of the tax with the prices obtained in sales made two years later will not show whether a claimant under the amendment had absorbed the tax or passed it on. • • • Nor am I able to find in the amendment any suggestion as to whether the incidence of the tax is to be determined by the costs of the processor."

course be impossible to prove. In *International Harvester Co.* v. *Kentucky,* 234 U. S. 216, this Court had under consideration a statute prohibiting any combination for the purpose of obtaining prices which were greater or less than the real value of the article. The Kentucky courts had construed "real value" to mean market value under fair competition and normal market conditions. This Court said that to ascertain what prices would be under non-existent conditions would be "to exact gifts that mankind does not possess."

So, we submit, to require taxpayers to prove that they have not passed on any specific amount of the processing tax is to exact gifts that mankind does not possess. If some arbitrary test of passing on is to be adopted, it should have been formulated by Congress. No such test can be found in the body of economic theory from which Section 21(d)(1) appears to have been derived. Undoubtedly there is a tendency in the long run to pass on taxes and other expenses to the consuming public. See Seligman, *The Shifting and Incidence of Taxation* (5th ed.) p. 218. Economists recognize this tendency and attempt to trace the burden of taxation as it is shifted forward or backwards by the taxpayer. They do not, however, profess to explain more than "what will happen in the long run." Bastable, *Public Finance,* p. 367.[12] A careful examination of the authorities in this field has disclosed no test by which it may be determined to what extent a particular taxpayer has borne the burden of a tax paid during any specified period of time. The fact that such taxes are generally and in the long run passed on affords no comfort to the individual taxpayer who may not have passed on the tax *in toto* but knows no way of proving it.

[12] See also the authorities cited in a footnote to the dissenting opinion in *Indian Motocycle Co.* v. *United States,* 283 U. S. 570, 581.

The respondent will doubtless contend that this Court's decision in *United States* v. *Jefferson Electric Mfg. Co.*, 291 U. S. 386, shows that it is possible to prove whether a tax has been passed on, and is therefore conclusive as to the adequacy of the remedy afforded by Section 21(d) (1). This contention has been advanced in the lower courts and accepted by a few, but rejected by the majority. The opinions of those courts which have accepted that decision as a controlling authority on this question fail to consider the significant differences between the statutes involved.

The tax under consideration in the *Jefferson Electric* case was an excise tax on the sale by the manufacturer of automobile parts and accessories. It was based on the sale price of the article sold, not, as in the case of the processing tax, on the quantity of raw material going into the manufacture of such article. Consequently, the taxpayer had first to determine upon the sale price, exclusive of tax, and then, by applying the rate of tax to that price, to compute the amount of the tax. Once the sale price had been fixed, a comparison between that price and the amount paid by the customer showed whether the tax was being "passed on". As this Court said (pp. 405-406):

> "* * * If by its invoices the plaintiff represented to its purchasers that the amount shown thereon included the tax as well as the selling price, and if it returned that amount less the tax as the selling price, and caused the tax to be computed on that basis, it cannot be heard to say, in the absence of other controlling circumstances of which there is no finding, that it did not collect the tax from the purchasers but itself bore the burden thereof:"

The nature of the tax in that case made it possible to give an intelligible meaning to the statute. The taxpayers were not contending that they could not tell how much of the tax had been passed on; they asserted that none of it had been passed on, and relied on the method of invoicing their goods.[13] As we have pointed out, in the instant case there is no necessary relation between the tax and the selling price, and therefore the situation is entirely different, both as regards the meaning of the act and the practical feasibility of complying with its requirements. The assumption on which the Court proceeded in the *Jefferson Electric* case—that "if the taxpayer has borne the burden of the tax, he readily can show it"—does not hold true here.

B. The requirement that it be shown that the tax has not been "passed back" to the producer imposes upon the right to recover a condition impossible of fulfillment.

In addition to proving that he has not "passed on" the tax, a taxpayer in order to recover is required to prove that the price paid by him was not reduced by any part of the amount of the tax. This apparently reflects the theory of the Department of Agriculture that some part of the tax is, in some instances, "passed back" to the producers of agricultural commodities. See Report of the Chief of the Bureau of Agricultural Economics, 1935, p. 24. But it seems obvious that matters of this kind are wholly insusceptible of proof. Manifestly, evidence that the taxpayer had not consciously and inten-

[13] Even under that statute difficulties have arisen in ascertaining the sale price and thus the incidence of the tax burden. Compare *Virginia Carolina Rubber Co.* v. *United States*, 79 C. Cls. 693, with *American Chain Co.* v. *Hartford-Connecticut Trust Co.*, 11 F. Supp. 770 (D. Conn.). See also Regulations 47, Art. 3; S. T. 391, I-2 C. B. 293; Regulations 46, Art. 11.

tionally deducted any amount representing the tax or a portion of it, from the price which he would pay if there were no tax in effect, would not satisfy the burden of the statute. The condition of establishing that the market price which was paid has not in any way been affected by the existence of the tax, is one that it is impossible to fulfill. Purchases of raw basic agricultural commodities, rice, wheat, cotton, etc., are made in a competitive market. Competitive prices are paid. The market price fluctuates in response to varying conditions of supply, demand, costs of production, competition, market psychology and other factors.

The effect, if any, of the tax obligation of the processor on the price he pays is even more indirect than the effect of that obligation on the price he receives. The processing tax, if it affects the prices of commodities at all, is only one of many factors influencing those prices. To only a very limited extent is the price which he pays for a commodity within the control of the individual processor. If the market price which he is required to pay goes down, the processor cannot tell whether the fall has been caused by an anticipation that he and his fellow processors will have to pay processing taxes, or whether it is the result of other factors such as an increase in supply or a decrease in consumer demand.

These are questions as to which economists may form opinions, but we submit they are incapable of definite proof in any individual case. In order to show whether the tax has reduced the price of the commodity it would be necessary to show what the price of the commodity would have been if there had been no tax. This is not a fact that is merely difficult to ascertain. It is a fact

that it is impossible to determine. Any attempt to ascertain it would involve pure speculation. See *International Harvester Co.* v. *Kentucky,* 234 U. S. 216. Because the processor's right to recover is limited by the requirement that it shall establish facts not susceptible of proof, the remedy is illusory and fictitious. It is not a plain, adequate and complete remedy. It is no remedy at all.

III.

THE ADEQUACY OF THE REMEDY UNDER SECTION 21(d) MAY APPROPRIATELY BE DETERMINED IN THE PRESENT PROCEEDINGS.

Despite the allegations of fact in the petitioners' bills of complaint to the effect that the method of conducting the rice processing business renders it impossible for them to prove in any case whether or not the burden of the tax has been shifted to the purchaser or producer, the respondent contends that in any present day manufacturing business, under modern accounting systems, it is possible to trace into all finished products both direct and indirect costs. If costs can be so traced, the respondent asserts that it is then perfectly possible for the courts to work out some theory on which to determine whether the economic burden of the tax has been passed on or passed back within the meaning of Section 21(d)[14] What that theory may be, the respondent does

[14] The overwhelming majority of District Courts in which the provisions of Section 21(d) have been considered have concluded that, in view of allegations similar to those in the petitioners' bills, the section could not be said to afford an adequate remedy at law. See, *e.g., Baltic Mills Co.* v. *Bitgood,* 12 F. Supp. 132 (D. Conn.); *Kingan & Co.* v. *Smith* (S. D. Ind.), decided September, 1935, not yet reported; *John A. Gebelein, Inc.* v. *Milbourne,* 12 F. Supp. 105 (D. Md.); *Gold Medal Foods* v. *Landy* (D. Minn.) decided October 12, 1935, not yet reported; *Washburn Crosby Co.* v. *Nee* (W. D. Mo.) decided October 3, 1935, not yet reported; *A. R. W. Paper Co., Inc.* v. *Riley* (N. D.

not suggest. Section 21(d) itself, as we have already demonstrated, gives no clue to the possible tests to be employed. Whether any theory can be worked out which will afford a taxpayer any efficacious remedy is a matter of speculation. Yet the respondent insists that the taxpayer must pay the tax and rely on the chance that in some way Section 21(d) can be interpreted as to give a fair measure of recovery. Determination as to the meaning and efficacy of the relief provided by that section can be had, the petitioner contends, only in a proceeding brought under that section to recover a refund of taxes paid. This contention runs squarely counter to well established principles of equity jurisprudence that to deprive a court of equity of jurisdiction a remedy at law must be not merely adequate but clear and free from doubt. *Davis* v. *Wakelee*, 156 U. S. 680, 688; *Union Pacific R.R. Co.* v. *Weld County*, 247 U. S. 282, 285, 286; *Dawson* v. *Kentucky Distilleries & Warehouse Co.*, 255 U. S. 288, 296; *Atlantic Coast Line* v. *Daughton*, 262 U. S. 413, 426; *Stewart Dry Goods Co.* v. *Lewis*, 287 U. S. 9, 11. "Where equity can give relief plaintiff ought not to be compelled to speculate upon the chance of his obtaining relief at law." See *Davis* v. *Wakelee*, *supra*, at 688. Because of that principle, it has been held repeatedly that a plaintiff is not to be remitted to his remedy at law under a statute ambiguous in its phraseology or doubtful in its meaning. *Atlantic Coast Line* v. *Daughton*, 262 U. S. 413; *Union Pacific Railroad* v. *Weld*

N. Y.), decided October 18, 1935, not yet reported; *Federal Mill Inc.* v. *McGowan* (W. D. N. Y.), decided October 24, 1935, not yet reported; *G. B. R. Smith Milling Co.* v. *Thomas*, 11 F. Supp. 833 (N. D. Texas); *Shenandoah Milling Co.* v. *Early* (W. D. Va.), decided September 23, 1935, not yet reported; *G. M. Peet Packing Co.* v. *Kavanagh* (E. D. Mich.), decided October 15, 1935, not yet reported.

County, 247 U. S. 282; *Wallace* v. *Hines*, 253 U. S. 66, 68; *Dawson* v. *Kentucky Distilleries & Warehouse Co.*, 255 U. S. 288, 296; *Hopkins* v. *Southern California Telephone Co.*, 275 U. S. 393, 399; *Standard Oil Co.* v. *Fox*, 6 F. Supp. 494, 498, approved on appeal on this point in 294 U. S. 87; *Proctor & Gamble Distributing Co.* v. *Sherman*, 2 F. (2d) 165 (S. D., N. Y.).

The respondent further contends, however, that if, as the petitioners assert, the provisions of Section 21(d) impose a condition of proof which cannot be met by evidence of any character, then it is so arbitrary as to deprive them of their property without due process of law. In that case, respondent urges, the provisions of the section would not bar them in a proceeding to recover a refund of the tax. Hence, it is concluded that the petitioners might well recover the full amount of the tax without regard to whether they could prove what they had passed on. But the respondent's argument rests on a false premise. It assumes that if Section 21(d) requires proof of facts incapable of demonstration, it will necessarily be held invalid. But, we submit, it might well be held constitutional. Conceivably the United States may deny to taxpayers any right to sue it at law to recover taxes illegally paid. *Cf. Nichols* v. *United States*, 102 U. S. 122; *Pacific Steam Whaling Co.* v. *United States*, 187 U. S. 447, 452; *Lynch* v. *United States*, 292 U. S. 571, 581, 582. The imposition of a condition impossible of fulfillment might be deemed an assertion by the sovereign of its immunity from suit. It cannot be doubted that Section 21(d) would be constitutional if so treated, at least as far as suit against the United States itself was concerned. Although we believe the right to sue a collector individually could not be taken away constitutionally (see *Graham & Foster* v. *Goodcell*, 282 U. S.

409, 431), yet if the respondent is correct in the contention which it so earnestly advances, a suit against a collector stands in no different case from a suit against the government itself. Thus it might well be that Section 21(d) would be constitutional although its effect was to preclude any recovery at all. But plainly a taxpayer would not then have an adequate remedy at law. On the contrary, he would have no remedy at law. Moreover, if it be assumed that so far as Section 21(d) prevented any recovery from a collector individually it would be unconstitutional, the right of the taxpayer against the collector alone would not be adequate. It is apparent that the claims for refunds of taxes which have been paid in the amount of hundreds of millions of dollars could never be satisfied by individual collectors. Nor, on the assumption that Congress had withdrawn the consent of the United States to be sued, can it be supposed that it would appropriate money to satisfy judgments in such amounts against the collectors individually. The result would be that the mere right of action preserved against the collector would be valueless. Yet it is of the essence of an adequate remedy to recover taxes illegally collected that it be possible to obtain full satisfaction of any judgment rendered. *Stewart Dry Goods Co.* v. *Lewis,* 287 U. S. 9. We submit, therefore, that a taxpayer might well have no remedy even if Section 21(d) were found to be meaningless or to impose impossible conditions. The assertion of the respondent that in such a case its provisions could be brushed aside so that full recovery could be had is not necessarily sound. In view of that doubt, the remedy at law cannot be pronounced so clear as to deprive equity of jurisdiction. To remit the plaintiff to his rights at law is to require him to run the risk of having no remedy at all.

CONCLUSION

We submit that the decrees dismissing the petitioners' bills of complaint should be reversed.

Respectfully submitted,

CHARLES B. RUGG
Amicus Curiae

FRANK J. MORLEY,
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Of counsel

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DEC 16 1935

IN THE

Supreme Court of the United States

No. 577.

RICKERT RICE MILLS, INC.,

v.

FONTENOT.

BRIEF AMICUS CURIAE.

JOHN E. HUGHES,
First National Bank Bldg.,
Chicago, Illinois.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

No. 577.

RICKERT RICE MILLS, INC.,

v.

FONTENOT.

BRIEF AMICUS CURIAE.

This brief is filed for the purpose of supplementing the brief heretofore filed by the undersigned in the case of *U. S.* v. *Butler*, No. 401, herein, and is filed in behalf of the same clients. The requisite consents have been filed with the Clerk.

In the brief heretofore filed, it was argued that the AAA Act was unconstitutional because it transferred property without compensation, from the overwhelming majority of the American people and bestowed it upon a small minority, in violation of the Fifth Amendment. It was also argued that the Act violated the Tenth Amendment. The following facts which were not stated in detail, are stated in this brief.

THOSE TO WHOM MORE THAN A BILLION DOLLARS HAS BEEN TRANSFERRED.

To September 30, 1935, the total amount of processing taxes collected, and transferred to farmers was $938,500,792.45.*

The number of benefit contracts signed under the AAA Act have been as follows: 1933—1,625,748; 1934—3,012,079; 1935—3,020,173. However the number of farmers signing contracts was less than the number of contracts because in many cases the same farmer signed separate contracts for different commodities produced by him. Inquiry at the Department of Agriculture elicits the answer that the Department has not compiled the information as to the number of farmers signing contracts and the admission that in a number of cases the same farmer signed more than one contract.

From the above it follows that a sum exceeding $1,000,000,000, collected in so-called taxes, has been directly transferred to less than 3,000,000 farmers in pursuance of the general scheme to regulate and limit production.**

THE PEOPLE FROM WHOM MORE THAN ONE BILLION DOLLARS WAS TRANSFERRED TO LESS THAN THREE MILLION FARMERS.

On page 16 of its brief in opposition to the petition for a Writ of Certiorari and motion for the injunction in this case, the Government makes this statement: "When the tax is paid, it is generally passed on to the first and subsequent purchasers." This statement is unquestionably true. Al-

*As part of the same general scheme to regulate production, millions more have been collected and transferred to growers under the Tobacco Control Act of June 28, 1934 (Title 7, U. S. C. A. Sec. 753), which was held unconstitutional in *Penn* v. *Glenn*, 10 Fed. Supp. 483. The Potato Control Act of August 24, 1935 (Title 7, U. S. C. A. Sec. 801, et seq.) is also part of the same general scheme.

**Indications are that the number of beneficiaries was considerably less than 3,000,000. For example, the votes set forth on page 210 of the Government's AAA brief show that the greatest number of contract signers voting were producers of corn and hogs, totalling, 745,415.

though there are exceptions, the tax is generally paid by the ultimate consumer of the commodities taxed. These commodities are; Wheat, Sugar, Tobacco, Hogs, Cotton, Field Corn, Paper, Jute, Peanuts and Rice. The ultimate consumers of these commodities embraces the entire population of the Nation. According to the 1930 census the population of the continental United States was 122,775,046. The July, 1934 estimate of the Census Bureau was 126,425,000. Thus taking the farmers who received the processing tax, at the over liberal estimate of 3,000,000, assuming them all to be heads of families and taking the average family to be four as per the 1930 census figures, the direct recipients of this money and their families did not exceed 12,000,000. This leaves, 114,425,000 people from whom the tax was exacted.

THE TRANSFER TO LESS THAN THREE MILLION PEOPLE FROM ONE HUNDRED FOURTEEN MILLION PEOPLE OF MORE THAN A BILLION DOLLARS DID NOT PROMOTE THE GENERAL WELFARE.

Under the legislation involved, not only has more than a billion dollars in taxes been transferred to less than 3,000,000 farmers from the other people of the Nation, but how many billions more have been transferred from these people to the farmers by reason of the higher prices* caused by the scarcity of the above-mentioned commodities due to the program of suppression of production and destruction embraced in this legislation, can only be conjectured. It is argued at length in the Government's brief in the AAA case and it was stated by the President in his speech at Chicago, on the day the AAA case was called for argument in this Court, that the tax promoted the general welfare because the farmer who received the benefit payment spent it for automobiles and other things and it was thus put in circulation in the channels of trade. To have any force whatsoever,

*A combination to produce high prices was said to be against public policy in *Standard Oil Co.* v. *United States*, 221 U. S. 1, 54, 58.

this argument must be based entirely on the utterly false assumption that the 114,000,000 people from whom this money was exacted, would not have also spent it and thus put it in circulation in the channels of trade. Most of the 114,000,000 people from whom the money was exacted, are people striving desperately to make a living and if this money had not been taken from them and given to the farmer, they would have spent it for living expenses, just as the farmer is alleged to have spent it and it would have been as fully and as effectively in circulation in the channels of trade.

A simple example will demonstrate this. If Peter has in his pocket $1,000 to spend for his living expenses during the current year and a bandit takes it away from Peter and gives it to Paul who buys an automobile and other things with the money, that does not have any more effect on the general volume of trade than if the robbery never happened, for the reason that Peter would have likewise spent the money and put it in circulation in trade, if he had not been robbed of it and the total trade so far as this $1,000 is concerned would have thus been the same.

The wealth of a country does not consist of its money in circulation, but of its tangible property and the AAA Act militated against the general welfare by destroying tangible property. Moreover, if there had been more tangible property to transport, the railroads would have had a greater freight tonnage and thus have had more money to disburse for labor and supplies. The same is true of a number of other industries.

The above clearly shows that any arguments to the effect that this tax increased the general income of the country or promoted the general welfare, are without any sound basis.*

The tax which was paid by the ultimate consumer was one which he was compelled to pay, irrespective of his in-

*Whether it indirectly promoted the special welfare of the 30,000,000 people who live on farms apart from less than 3,000,000 and their families who received payments under the Act, is highly debatable. If it did it was at the expense of the remaining 96,000,000 people of the country.

come. A man struggling for existence in the cities and in the rural towns and villages, was obliged to pay this tax when he bought such necessities of life as Wheat, Sugar, Tobacco and Cotton, even though he could not pay his other bills. The tax does not even have the support of the supposed social justice theory upon which socialism or share the wealth schemes rest, for it was not exacted from the rich for the benefit of the poor, but was exacted from the great masses of the people of the country, most of whom were never any better off than the farmers and most of whom, during the period the tax was exacted from them, were indeed not nearly so well off as the farmer to whom the tax was paid. It was not exacted solely for the benefit of poor farmers, but the millionaire lolling in luxury in the great cities who had a plantation in the South, as a hobby or plaything, was requested by the Department of Agriculture to suppress production on his plantation and was paid for the suppression of this production out of the money which the Government collected from the struggling average citizen upon basic commodities which he had to consume in order to live.*

TO HOLD THAT THE GOVERNMENT CAN NOT TAKE THE PROPERTY OF A CITIZEN WITHOUT DUE PROCESS OF LAW BUT THAT IF IT DOES SO TAKE HIS PROPERTY IT MAY KEEP IT, IS TO NULLIFY THE FIFTH AMENDMENT.

The Government will admit that it can not take the property of its citizens without due process of law. In this case it argues that if it has taken such property it may keep it. Although the argument is not put so bluntly, for all practical purposes, that is what it means because these amendments to the Agricultural Adjustment Act are so broadly drawn, that for all practical purposes, they prevent refunds. This was their conceded purpose and design. For example, Section 21(d)(2) provides that a claim for refund

*One case where a citizen of Michigan received $2,500 for suppressing the production of cotton on his Mississippi plantation, has come to the notice of the Amicus Curiae.

must be filed "by the person entitled thereto."* Under this provision the Department can throw out most of the refund claims filed, on the ground that the person filing them is not really entitled to the refund. This Act does not merely provide that if a processor has added the tax to the sale price he can not recover it but is much broader. It provides that he can not recover if he "has directly or indirectly, included such amount in the price of the article with respect to which it was imposed." This provision is so broad that if it should be incorporated in the income tax law, it would virtually prevent the refund of illegally collected income taxes. In the case of a taxpayer engaged in a merchandising business for one instance, such taxpayer collects all his money from his customers. Included in the money thus collected is his income and also out of the money thus collected he pays his income tax.

The question whether the tax has been passed on "indirectly" is an entirely different question than the question whether the price of the article sold would have been any greater had the tax not existed.

To hold that the Government has taken this money from the taxpayer without due process of law, but that having so taken it nevertheless it may keep the money, is to nullify this provision of the Fifth Amendment and render it of no protection to the citizen.

As this Court has held, Constitutional provisions for the protection of citizens are deep-rooted and substantial and not mere technicalities and citizens are not to be deprived of their protection by technicalities and what Congress cannot constitutionally do directly it cannot accomplish by indirection.**

All of which is respectfully submitted.

JOHN E. HUGHES,
First National Bank Bldg.,
Chicago, Illinois.

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*Other Acts use the words "by the taxpayer". The change is deliberately made to afford ground for throwing out claims.

***Pollock* v. *Farmers Loan & Trust Co.*, 157 U. S. 429, 581. *Macallen* v. *Massachusetts*, 279 U. S. 620, 629.

FILE COPY

JAN 20

Nos. 577-581, 585-587

In the Supreme Court of the United States

OCTOBER TERM, 1935

RICKERT RICE MILLS, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

A. B. DORE, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

UNITED RICE MILLING PRODUCTS CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

BATON ROUGE RICE MILL, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

T. SIMON, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

LEVY RICE MILLING CO., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

FARMERS RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

NOBLE-TROTTER RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR REHEARING

In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 577

RICKERT RICE MILLS, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

No. 578

A. B. DORE, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

No. 579

UNITED RICE MILLING PRODUCTS CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

43054—36

No. 580

BATON ROUGE RICE MILL, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

No. 581

T. SIMON, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

No. 585

LEVY RICE MILLING CO., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

No. 586

FARMERS RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

No. 587

NOBLE-TROTTER RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR REHEARING

Comes now the Solicitor General, on behalf of the Respondent, and respectfully prays that the judgments heretofore entered in the above-entitled causes be vacated, that the issuance of the mandates thereon be stayed, and that a rehearing be granted.

The respondent respectfully shows that the District Court refused to grant an injunction against the collection of sums claimed as Federal taxes. The decree of the Circuit Court of Appeals denied a motion for a preliminary injunction pending appeal on the ground that the taxpayers had a remedy at law to recover back any taxes illegally exacted and that the court had no jurisdiction to grant injunctive relief. This Court vacated the decree of the District Court and ordered the entry of a decree enjoining the collection of the assailed "exaction."

Section 3224 Revised Statutes, enacted in 1867, and Section 21 (a) of the Agricultural Adjustment Act alike forbid injunctions against the collection of Federal taxes. Section 3224 provides:

> No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

This section applies both to taxes and to such "exactions" as are involved in the cases at bar. In *Bailey* v. *George,* 259 U. S. 16, this Court held that Section 3224 prohibited enjoining the collection of an amount, which on the same day in another case (*Child Labor Tax Case,* 259 U. S. 20) had been decided to be not a tax, but an unconstitutional "exaction" to regulate transactions, the control of which by the Constitution had been reserved to the States. As this is the same situation existing in the instant cases, we respectfully submit that the opinion and judgment of this Court directing that an injunction be granted by the District Court are erroneous and inconsistent with the intent and purpose of the statute, as construed in *Bailey* v. *George.*

The parallel between *Bailey* v. *George* and the cases at bar is striking. In each it was alleged that:

(1) The exaction was unconstitutional.

(2) The collection of the exaction was threatened.

(3) The collection would result in irreparable damage.

(4) An injunction should be granted permanently enjoining collection.

In each case the Collector relied upon the provisions of Section 3224 as depriving the courts of jurisdiction; in each case there was an adequate remedy at law consisting of a suit for refund after payment; in each case the decision was reached in the light of a holding that the imposing statute was unconstitutional; in each case the exaction had not been paid and the decision that the imposing statute was invalid effectively prevented a collection thereafter. A departure from the rule in *Bailey* v. *George* is not required to insure the return of impounded funds to the taxpayer if the Court desires to accomplish that result. A procedural precedent may be found in *Smallwood* v. *Gallardo*, 275 U. S. 56.

As *Bailey* v. *George* is not mentioned or distinguished, it seems certain that the opinion in the present cases will be construed by other courts, in cases raising the constitutionality of tax legislation, as overruling that decision.

The decisions in the instant cases are of the gravest importance in that they involve the construction and applicability of Section 3224. The importance of preserving the rule of *Bailey* v. *George* cannot be overemphasized. Any impairment of the force of that decision or departure from the principle of Section 3224 would destroy essential safeguards to the orderly and uninter-

rupted collection of all Federal taxes and imperil the normal functioning of government.

For the foregoing reasons, your petitioners respectfully pray that this petition be granted, the mandate stayed and the decree of the District Court affirmed.

Copies of this petition have been served upon opposing counsel.

STANLEY REED,
Solicitor General.

JANUARY 1936.

I certify that this petition is presented in good faith and not for delay.

STANLEY REED,
Solicitor General.

U. S. GOVERNMENT PRINTING OFFICE: 1936

SUPREME COURT OF THE UNITED STATES.

No. 577.—October Term, 1935.

Rickert Rice Mills, Inc., Petitioner, *vs.* Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[January 13, 1936.]

Mr. Justice Roberts delivered the opinion of the Court.

This is one of eight companion cases.[1] They were consolidated for hearing by the District Court. It will be sufficient briefly to state the facts in No. 577:

The petitioner, a processor of rice, filed its bill in the District Court for Eastern Louisiana, to restrain the respondent from assessing or collecting taxes levied for the month of September, 1935, and subsequent months, pursuant to the Agricultural Adjustment Act, 1933,[2] as amended by the Act of August 24, 1935.[3] The bill charges the exaction is unconstitutional and alleges the respondent threatens collection by distraint, which will cause irreparable injury, as the petitioner has no adequate remedy at law to recover what may be collected. A preliminary injunction was sought. The respondent filed a motion to dismiss, citing Revised Statutes 3224 and Section 21 (a) of the amended Agricultural Adjustment Act as prohibiting restraint of collection, and also asserting that the petitioner had a plain, adequate, and complete remedy at law. The court refused an interlocutory injunction and entered a decree dismissing the bill. Appeal was perfected to the Circuit Court of Appeals. The District Judge refused to grant an injunction pend-

[1] The others are: 578, *Dore* v. *Fontenot;* 579, *United Rice Milling Products Co., Inc.* v. *Fontenot;* 580, *Baton Rouge Rice Mill, Inc.* v. *Fontenot;* 581, *Simon* v. *Fontenot;* 585, *Levy Rice Milling Co., Inc.* v. *Fontenot;* 586, *Farmers Rice Milling Co., Inc.* v. *Fontenot,* and 587, *Noble-Trotter Rice Milling Co., Inc.* v. *Fontenot.*

[2] C. 25, 48 Stat. 31.

[3] Public No. 320, 74th Cong., 1st Sess.

ing the appeal. Application to the Circuit Court of Appeals for such an injunction was denied upon the view that the petitioner had an adequate remedy at law and the statute deprived the court of jurisdiction to restrain collection.

In praying a writ of certiorari the petitioner asserted that by reason of the provisions of Section 21 (d) it would be impossible to recover taxes collected, even though the act were unconstitutional, since the section forbids recovery except upon a showing of facts not susceptible of proof. This court granted the writ and restrained collection of the tax upon condition that the petitioner should pay the amount of the accruing taxes to a depository, to the joint credit of petitioner and respondent, such funds to be withdrawn only upon the further order of the court. The cause was advanced for hearing and has been fully argued on the questions of the constitutionality of the exaction and the inadequacy of the remedy for recovery of taxes paid.

The changes made by the amendatory act of August 24, 1935, do not cure the infirmities of the original act which were the basis of decision in *United States* v. *Butler* (January 6, 1936). The exaction still lacks the quality of a true tax. It remains a means for effectuating the regulation of agricultural production, a matter not within the powers of Congress.

We have no occasion to discuss or decide whether Section 21 (d) affords an adequate remedy at law. As yet the petitioner has not paid the taxes to the respondent, and, in view of the decision in the *Butler* case, hereafter cannot be required so to do. If the respondent should now attempt to collect the tax by distraint he would be a trespasser. The decree of the District Court will be vacated, an appropriate order entered directing the repayment to the petitioner of the funds impounded *pendente lite*, and the cause remanded to the District Court for the entry of a decree enjoining collection of the assailed exaction. A similar disposition will be made of the companion cases.

So ordered.